and the presumption is that they did so. In what they have done in Schedules C and E we find bye-laws made applicable to the "Fyne, Shira, and Aray (Loch Fyne)." On turning to Schedule A, where the districts are defined and specified, we find none with this precise name, but we find a district "Loch Fyne" which, both from geographical knowledge and from the context in the Schedule, we have no difficulty in identifying as the district of these three rivers.

I am accordingly of opinion that the determination of the learned Sheriff-Substitute was erroneous, and that the appeal must be sustained.

The Court answered the questions of law in both appeals in the negative.

Counsel for the Appellants—Henderson, K.C.—Macgregor. Agent—Robert Pringle, W.S.

COURT OF SESSION.

Saturday, March 3.

FIRST DIVISION.

[Sheriff Court at Dumbarton.

MACDONALD *v.* SINGER MANUFACTURING COMPANY, LIMITED.

Jurisdiction — Emergency Legislation — Temporary Statute Regulating Wages—Temporary Statutory Tribunal with Exclusive Jurisdiction in Proceedings for Offences under the Act—Expiry of Statute and Relative Machinery for its Enforcement — Subsequent Action in Ordinary Court to Recover Wages Alleged to be Due under Temporary Statute — Wages (Temporary Regulation) Act 1918 (8 *and* 9 *Geo. V, cap.* 61.) — *Industrial Courts Act* 1919 (9 *and* 10 *Geo, V, cap.* 69).

A temporary statute, the Wages (Temporary Regulation) Act of 1918, enacted that for a certain period it should be an offence for an employer to pay wages at less than a prescribed rate or at less than a minimum rate substituted therefor by a statutory court. After the expiry of the Act and after the machinery created thereby, including a special tribunal with exclusive jurisdiction to deal with offences under the Act, had come to an end, a wage earner brought an action against her employers to recover wages alleged to be due to her under the temporary legislation and relative orders and awards. The defenders pleaded no jurisdiction on the ground that the special tribunal referred to above alone had jurisdiction to enforce the rates in question, and that the whole machinery for ascertaining such rates had ceased to exist. *Held* that as the wage earner's right to her wages remained a common law right notwithstanding that a statutory minimum rate might have to be read into the contract of employment, the Court had jurisdiction to entertain the action, and plea *repelled.*

War — Emergency Legislation — Wages—Whether Advance Authorised by Award of Industrial Court Intended as an Addition to Actual Wage or to Prescribed Statutory Rate—Construction of Award and Orders—Wages (Temporary Regulation) Act 1918 (8 *and* 9 *Geo. V, cap.* 61), *secs.* 2 (3) *and* 4 (1) (*e*).

The Wages (Temporary Regulation) Act 1918 made it an offence for any person who employed a workman to pay him wages at a rate less than a minimum, called in the Act "the prescribed rate," applicable to workmen in the same class, or less than a minimum rate "substituted" therefor by a statutory court or by agreement approved by the Minister of Labour. By an award of the appropriate tribunal of 25th January 1919 a substituted rate was provided for workers in engineering shops of 5s. per week "over and above the week's earnings of the workpeople concerned calculated on the present basis." A subsequent order of the Ministry of Labour extended this advance to those "to whom the prescribed rate in question is applicable." By an award of the Industrial Court in proceedings at the instance of the trade union of certain workwomen in the engineering trade the award of 25th January 1919 was interpreted as entitling the wage earner to an advance of 5s. on the then "prescribed" or minimum rate of wages in the trade, stating at the same time what that rate was. A woman whose actual rate of wages during the period covered by her claim was in excess of the rate of wages authorised by the award of the Industrial Court brought an action for the increase of 5s. per week sanctioned by the award of 25th January 1919 on the ground that it was intended to be an addition to the actual wages paid, and that the Industrial Court had misinterpreted the original award. *Held* that the advance authorised by the award of the Industrial Court was a war advance on the "prescribed" or minimum rate of wages, and was not an addition to the actual earnings of any individual workwoman, and defenders *assoilzied.*

The Wages (Temporary Regulation) Act 1918 (8 and 9 Geo. V. cap. 61) enacts—Section 4 (1)—"For the purposes of this Act the prescribed rate of wages shall be as follows . . . (*e*) As respects a woman or girl to whom neither of the last two paragraphs applies, the prescribed rate shall be the time rate or other basis for determining wages (with any allowances for overtime, night work, week-end or holidays when worked, and additional war bonuses or war advances) paid on the said date [11th November 1918] by employers employing a majority of women or girls engaged on the same class of work in the trade or industry or branch thereof in the district in which she is employed. . . ."

The Industrial Courts Act 1919 (9 and 10 Geo. V, cap. 69) by section 6 (1) extended the provisions of the Wages (Temporary

Regulation) Act 1918, subject to certain modifications, until the 30th day of September 1920.

Helen Macdonald, Partick, *pursuer*, raised an action in the Small Debt Court at Dumbarton against the Singer Manufacturing Company, Limited, Clydebank, *defenders*, whereby she sought to recover payment of £18, 5s., subsequently restricted to £15, 18s. 5d., being the amount of wages alleged to be due to her by the defenders.

The pursuer's claim was based on an award of the Court of Arbitration, Engineers and Allied Trades, dated 25th January 1919—women workers—in terms of which an advance of 5s. per full ordinary week "over and above the week's earnings of the workpeople concerned calculated on the present basis" was made in the case of piece-workers.

The award in question (No. 174) stated, *inter alia*—"4. It was agreed by the parties at the hearing that any decision reached would only cover engineering shops, boiler shops, and foundries. The award of the Court in full settlement of the claim submitted is as follows:—5. That in addition to other advances granted from time to time by statutory rules and orders or by awards, the women concerned, aged eighteen years and over, shall receive a further war advance of 5s. per full ordinary week. . . . 7. In the case of piece workers, premium bonus workers, and others working on a system of payment by results, the amounts are to be paid at the rate of 5s. per full ordinary week over and above the week's earnings of the workpeople concerned calculated on the present basis. . . . 9. The rates in force on 11th November 1918 as modified by the advances provided for in clauses 5 and 6 hereof, shall be, and shall be deemed to be, the substituted rates of wages for the purposes of the Wages (Temporary Regulation) Act 1918. 10. The advances hereby awarded are to be paid as from the first full pay day in January 1919, and are to be payable in respect of the pay period for which payment was made on such pay day."

The rates in force on 11th November 1918 referred to in section 9 of the above award were prescribed in the following Order of the Statutory Rules and Orders 1918, viz.—No. 546 (the Consolidated Women's Wages Order), dated 8th May 1918, made by the Ministry of Munitions, which provided as follows:—"First Schedule.—Part V. General Provisions.—Par. 41. In addition to the amounts payable to women or girls under any of the foregoing directions, there shall be paid over and above those amounts to all women and girls whilst employed on munitions work, whether working on time or on a system of payment by results, an advance which in the case of women of eighteen years of age and over shall be 6s. per full ordinary week. . . ."

No. 1073, dated 28th August 1918, provided as follows:—"First Schedule.—Par. 1. The earnings of all women and girls whilst employed on munitions work, whether working on time or on a system of payment by results, shall as from the beginning of the first full pay following 1st September 1918, or the date of the receipt of this order, whichever be the later, be advanced as follows:—In the case of women of eighteen years of age and over, 5s. per full ordinary week. . . ."

In terms of section 5 (1) of the Wages (Temporary Regulation) Act 1918 the pursuer's trade union took steps to enforce this award against the employers before the appropriate statutory tribunal, *i.e.*, the Industrial Court, maintaining (1) that it applied to Singer's sewing machine workwomen, and (2) that the advance granted was an advance not on the statutory minimum or "prescribed" rate of wages but on the actual wages paid.

The award of the Industrial Court, No. 428, dated 4th August 1920, was in the following terms:—"*Terms of Reference.*—Question as to whether there is a prescribed or substituted rate applicable to the class of workers concerned, and if so what is the prescribed or substituted rate for that class. 1. The question was referred to the Industrial Court by the Minister of Labour under the provisions of the Wages (Temporary Regulation) Acts 1918 and 1919 as amended by the Industrial Courts Act 1919. 5. The establishment consists, so far as the questions before the Court are concerned, of women and girls employed in the manufacture of sewing machines and the parts thereof, and this decision relates only to women and girls employed in such manufacture. 6. The contention put forward on behalf of the women and girls concerned is that the company are engaged in the engineering trade, and that the prescribed rates are those pertaining to the engineering trade in the Glasgow district, for which rates were substituted by Order 260 issued by the Minister of Labour under section 2 (3) of the Wages (Temporary Regulation) Act 1918. On behalf of the company it was submitted that the prescribed rates applicable to women and girls employed by them in the manufacture of sewing machines were not those applicable to the engineering trade generally, and were not those for which rates were substituted by the said Order 260. 7. The prescribed rate in the Glasgow district for women and girls employed in engineering shops on work which prior to the war was not recognised as men's work, was:—*Time Workers.*—Women eighteen years and over, 5½d. per hour plus 11s. per full ordinary week. . . . *Piece Workers.*—Piece-work prices to enable every woman or girl of ordinary ability in the establishment concerned to earn at least 25 per cent. over her time rate, plus 11s. per full ordinary week for women eighteen years and over. . . . 8. The establishment of the company at Clydebank is an engineering shop within Award dated 25th January 1919, No. 174 of the interim Court of Arbitration as extended by Order dated 26th February 1919, made by the Minister of Labour under section 2 (3) of the Wages (Temporary Regulation) Act 1918—Statutory Rules and Orders 1919, No. 260, and the women and girls concerned are employed in such engineering shop. 9. The women and girls concerned are employed in the company's establishment on work of a class which

prior to the war was not recognised as men's work in the Glasgow district. 10. The Court find that there are prescribed rates applicable to the women and girls concerned, and are as follows: — *Time Workers.*—Women eighteen years of age and over, 5½d. an hour plus 11s. a full ordinary week. . . . *Piece Workers.* — Such piece prices as will enable every woman or girl of ordinary ability to earn at least 25 per cent. over her time rate as set out above, plus 11s. a full ordinary week in the case of women eighteen years of age and over, and 5s. 6d. in the case of girls under eighteen years of age. 11. The Court further find that for such prescribed rates, rates were substituted by Statutory Rules and Orders 1919, No. 260, dated 26th February 1919, 5s. a full ordinary week in the case of the women concerned eighteen years of age and over . . . in excess of such prescribed rates. 12. The Court further find that there is no prescribed or substituted rate for women or girls on probation in the company's establishment."

Statutory Rules and Orders 1919, No. 260, dated 26th February 1919, referred to in section 11 of the above award and made by the Minister of Labour under section 2 (3) of the Wages (Temporary Regulation) Act 1918, provided:—"Whereas sub-section (3) of section 2 of the Wages (Temporary Regulation) Act 1918 provides as follows:—Where an award determining or varying a rate has been so made by the Interim Court of Arbitration, or an agreement or settlement for such purpose has been arrived at, the Minister of Labour may, on the advice of the Interim Court of Arbitration, by order direct that the determination or variation effected by the award, agreement, or settlement shall be binding on all workmen to whom the prescribed rate in question is applicable and the employers of those workmen: And whereas on the 25th January 1919 the Interim Court of Arbitration made the award set out in the schedule hereto [the award No. 174 printed above], and such award determined or varied the rate applicable to the workmen to whom the award relates: Now therefore on the advice of the Interim Court of Arbitration the Minister of Labour, in pursuance of the powers vested in him by the said sub-section and of all other powers enabling him in this behalf, hereby orders and directs that the determination or variation effected by the said award shall be binding on all workmen to whom the prescribed rate in question is applicable and the employers of those workmen."

On 30th September 1920, the period which the Industrial Courts Act 1919 fixed as the limit until which the Wages (Temporary Regulation) Act 1918 should operate subject to the proviso in the schedule of the former Act, expired.

The summons in the pursuer's action was dated 26th May 1921.

The action having been transferred to the ordinary roll, a condescendence and answers were lodged.

The parties averred, *inter alia*—"(Cond. 1) The pursuer was in the employment of defenders from 1917 till 11th February 1921. She was employed in department No. 43 of defenders' works at Kilbowie, Clydebank, as an assembler of parts of sewing machines manufactured by defenders. Pursuer was a piece worker till 10th July 1920, and thereafter was a time worker. . . . (Cond. 7) It is averred that the effect of Award No. 174, Order No. 260, and Award No. 428 was to give certain workers, including pursuer, an advance of 5s. per week upon the actual sum of remuneration otherwise payable to each worker week by week as at 26th February 1919 and thereafter. . . . (*Ans. 6 and* 7) Award No. 428 of the Industrial Court, dated 4th August 1920, is referred to for its terms, beyond which no admission is made. Explained that the said award found that certain prescribed rates of wages were payable under the provisions of the Wages (Temporary Regulation) Acts 1918 and 1919, as amended by the Industrial Courts Act 1919, in respect of certain women and girls employed in the defenders' establishment, and that for such prescribed rates (the amounts of which were declared by the said award) a certain other rate involving an increase of 5s. a full ordinary week in the case of women of 18 years of age and over was substituted by the foresaid Order No. 260, dated 26th February 1919. Order No. 428 did not have the effect of entitling any worker to claim payment of an addition of 5s. to her weekly wage, but did have the effect of setting up for certain workers a substituted rate of wages (payment of which was enforceable under the terms of the Wages (Temporary Regulation) Act) in place of the prescribed rate which was found by the award to have been applicable prior to 26th February 1919. The women affected by the said award included women of 18 years and over engaged in the employment in which the pursuer was engaged. The Munitions of War Act, Wages (Temporary Regulation) Acts, and Industrial Courts Act contained provisions for enforcing payment under the Orders of the Tribunals set up by the said Acts, of wages at prescribed or substituted rates in cases where the wages actually paid were less than the amounts payable in terms of the prescribed or substituted rates. Explained further that the advance of 5s. provided for by Order No. 260 was payable only in respect of a full working week, and that a worker working less than a full working week was entitled only to a proportionate part of the weekly wage payable in accordance with the substituted rate. . . . (Cond. 8) The pursuer is a workman to whom the said awards and order apply. During the time she was in defenders' employment she was over 18 years of age. She was paid the prescribed rate of wages [viz., the rate of earnings which she earned at 11th November 1918 and which subsisted until 26th February 1919], but she was not paid the advance of 5s. per week under the said awards and order. Defenders' explanation in answer is denied. Explained that while pursuer was a piece worker the piece-work prices or wages paid to her were fixed on the basis of what a woman of ordinary ability could

earn at the prescribed rates referred to. . . . (*Ans.* 8) Admitted that while the said awards and order were operative the pursuer was a worker to whom they applied, and that during the time she was in the defenders' employment she was over 18 years of age. *Quoad ultra* denied. Explained that over the whole period to which the present claim relates the rate of wages paid to the pursuer by the defenders exceeded the substituted prescribed rate found due under Order No. 428."

The pursuer pleaded, *inter alia*—"1. The pursuer being a workman to whom the awards and Order founded on apply, and being entitled to the payment of 5s. per week thereunder applicable to her, decree should be granted as craved with expenses. 3. The defences are irrelevant.

The defenders pleaded, *inter alia*—"1. The Court having no jurisdiction, the action should be dismissed. 2. The pursuer having no title to sue, the action should be dismissed. 3. The action being incompetent in respect that the claim to which it relates was committed to the determination of the Munitions Tribunals, decree of dismissal should be pronounced. 4. The pursuer's averments being irrelevant, the action should be dismissed."

On 18th November 1921 the Sheriff-Substitute (MENZIES) repelled the third plea-in-law for the pursuer, and the first, second, third, and fourth pleas-in-law for the defenders and allowed a partial proof.

The defenders having appealed, the Sheriff (MACPHAIL, K.C.) on 27th January 1922 refused the appeal and allowed a proof at large.

After a proof the Sheriff-Substitute on 4th May 1922 pronounced decree against the defenders for £15, 18s. 5d.

The defenders appealed to the Sheriff, who on 26th June 1922 refused the appeal.

The defenders having obtained leave appealed to the First Division of the Court of Session, and argued—The jurisdiction of the Court with regard to the claim in question was excluded. The Legislature, which created the right to a certain wage, committed the enforcement of that right to the particular tribunal it had set up. Where a statute set up rights and prescribed special remedies, such as a statutory tribunal, against their infraction, the presumption was that it thereby excluded the jurisdiction of the ordinary civil courts—*Doe* v. *Bridges*, 1831, 1 B. & A. 847, *per* Lord Tenterden, C.-J., at p. 859; *Wolverhampton New Water-works Company* v. *Hawkesford*, 1859, 6 C.B. (N.S.) 336, *per* Willis, J., at p. 356; *Pasmore* v. *Oswaldtwistle Urban Council*, [1898] A.C. 387, *per* Lord Halsbury, L.C., at p. 394; *Hulme* v. *Ferranti Limited*, [1918] 2 K.B. 426; *Lyall* v. *Carnegy*, 1900, 2 F. 423, 37 S.L.R. 322. In the present case the Munitions Tribunal had sole jurisdiction during the period of its existence, and on its disappearance along with the statute which had set it up there was no tribunal in existence which could competently deal with the pursuer's claim. The Corn Production Act 1917 (7 and 8 Geo. V, cap. 46), sec. 4 (2), provided no analogy to the present case, it being there expressly laid down that the penalties therein mentioned should not deprive the workers of their civil law remedies. As the Wages (Temporary Regulation) Act 1918 (8 and 9 Geo. V, cap. 61) and the Industrial Courts Act 1919 (9 and 10 Geo. V, cap. 69) omitted these provisions, it was apparent that concurrent jurisdiction of the ordinary courts was not contemplated—*cp. Waghorn* v. *Collison*, 1922, 38 T.L.R. 352, *per* Rowlatt, J.; *Bentley* v. *M. S. & L. Railway Company*, (1891) 3 Ch. 222; and *Rex* v. *Ellis*, (1921) W.N. 141. Neither was the pursuer's case well founded on its merits. She had admittedly all along received wages in excess of the prescribed rate applicable to her, including the last advance of 5s. That advance was not to be added to the actual wages received by her, but fell to be added to the minimum or prescribed rate. The pursuer being already in receipt of a wage in excess of the latter was therefore not affected by that advance. Counsel referred to the Wages (Temporary Regulation) Act 1918 (8 and 9 Geo. V, cap. 61), sec. 4 (1) (*e*), as extended by the Wages (Temporary Regulation) Extension Act 1919 (9 and 10 Geo. V, cap. 18); Munitions of War (Amendment) Act 1916 (5 and 6 Geo. V, cap. 99), sec. 6; and the Munitions of War Act 1917 (7 and 8 Geo. V, cap. 45), sec. 4.

Argued for the pursuer—The Wages (Temporary Regulation) Act 1918, sec. 1, together with the Industrial Courts Act 1919, sec. 6, and schedule to that Act, plainly implied that the ordinary courts had jurisdiction in regard to the present question. There was no limitation or restriction attached to the enforceability of the advance in question. The cases which the defenders referred to in support of their contention that the jurisdiction of the ordinary civil courts was excluded were inapplicable—*Vestry of St Pancras* v. *Batterbury*, 1855, 2 C.B. (N.S.) 477. Although it might be conceded that the statutory tribunal must in the first instance be appealed to for a remedy, that did not mean that the jurisdiction of the ordinary courts was thereby excluded—*Dante* v. *Assessor for Ayr*, 1922 S.C. 109, 59 S.L.R. 101. The jurisdiction of the ordinary courts was only excluded by express legislation—*Shepherd* v. *Hills*, 1855, 11 Ex. 55, *per* Parke, B., at p. 67; *Booth* v. *Trail*, (1883) 12 Q.B.D. 8, *per* Lord Coleridge, C.-J., at p. 10; *Batt* v. *Price*, (1876) 1 Q.B.D. 264, *per* Blackburn, J., at p. 268, and Lush, J., at p. 269. The fixing of the rates was the only function of the tribunal in question, and it was quite competent for the pursuer to seek in the ordinary courts to recover wages thus fixed even after the statute setting up that tribunal was no longer in existence—Interpretation Act 1889 (51 and 52 Vict. cap. 63), sec. 38 (2) (*c*); Maxwell on Statutes (6th ed.), pp. 731 and 732; *Steavenson* v. *Oliver*, (1841) 8 M. & W. 234, *per* Lord Abinger, C.B., at p. 240; *Bentley* v. *M. S. & L. Railway Company* (*cit.*); *Groves* v. *Wimbourne*, (1898) 2 Q.B. 402; *Ross* v. *Rugge-Price*, (1876) 1 Ex. D. 269. Apart from the question of jurisdiction, however, the advance of 5s. as set forth in Order No. 174 fell to be added to the actual

earnings of the pursuer and not to the prescribed rate of wages — Munitions of War Act 1915 (5 and 6 Geo. V, cap. 54), Part II, sec. 4 (2); Munitions of War (Amendment) Act 1916 (5 and 6 Geo. V, cap. 99), sec. 6; Munitions of War Act 1917 (7 and 8 Geo. V, cap. 45), sec. 4; S. R. & O., No. 546 and No. 1073; Award No. 174; S. R. & O., No. 260.

At advising—

LORD PRESIDENT—This is an action by a workwoman employed by the Singer Manufacturing Company, the object of which is the recovery of 5s. a-week over and above the wages actually received by her from 26th February 1919 to 30th September 1920 —that is to say, for a period of 73 weeks, during 63 of which the pursuer was a piece-worker, and during 10 of which she was a timeworker. The action is concerned with a sum of only £18 odds, but the question raised affects other employees besides the pursuer, and really involves altogether a total sum of nearly £50,000.

I shall first explain what the question is. When the armistice of 11th November 1918 brought the termination of the Great War into view, it was obvious that a repetition of the industrial upheaval which the war had brought about in the adaptation of industry to war production had to be faced during the period of return to peace conditions. It was further obvious that during that period there was considerable risk of disturbance of the conditions of employment and particularly of the rate of wages. Accordingly the Wages (Temporary Regulation) Act of 1918 was passed. Its object (as may be gathered from the full title of the Act) was to protect industry from strikes and lock-outs by temporarily prescribing minimum rates of wages. For this purpose it was enacted by section 1 that for a period of six months, subsequently extended, it should be an offence for any person who employed a workman to pay him wages at a rate less than a minimum which the Act calls "the prescribed rate" applicable to workmen belonging to the same class, or less than a minimum rate "substituted" therefor by a statutory court or by agreement approved by the Minister of Labour. Section 4 of the Act defined the prescribed rates. One effect of this legislation was to read into the contract of employment of all workmen affected by the Act a proviso that the rate at which their wages were paid should not be less than the minimum rate "prescribed" or "substituted." The pursuer's case is that the wages paid to her were made up on a rate less by 5s. per full ordinary week than the prescribed or substituted rate applicable to workwomen of her class. The defenders' answer on the merits is that she was actually paid wages at a rate exceeding the prescribed or substituted rate, and that accordingly they are due her nothing.

But *in limine* the defenders plead "no jurisdiction." This plea is founded on two things—(1) On the fact that the Act created a special right or privilege in favour of the workers affected by it, and (by section 5 (1)) set up a special tribunal (viz., a munition tribunal of the second class) with exclusive jurisdiction in proceedings for offences under the Act; and (2) that that special tribunal was given power to make an order on an employer against whom a prosecution was brought, to pay to his workmen any sum proved to be due to them as the result of calculating their wages on the prescribed or substituted rate, as such rate might be ascertained by the tribunal in the course of the proceedings. The argument was that this special tribunal alone had jurisdiction to enforce "prescribed" or "substituted" rates, and that the whole machinery for ascertaining such rates, which the special tribunal had the power to operate, was brought to an abrupt end on the day on which the pursuer's claim ends, namely 30th September 1920, by the Industrial Courts Act 1919 — eight months before the institution of the present action. It is, in my opinion, a mistake to regard the Act as constituting in favour of the workman a new and independent right to which a special statutory remedy was appropriated. Yet this is the first condition of success for the plea of "no jurisdiction." The workman's right to his wages remained a common law right notwithstanding that a statutory minimum rate of wage had to be read into the contract of employment. It is doubtless true that if such an action as the present had been raised and carried to a conclusion before 30th September 1920, and if any question about the prescribed or substituted rate had arisen in it, the civil court before which it depended would not have been competent to usurp the functions of the Ministry of Labour or of the Court of Arbitration under section 2 (2) of the Act of 1918, and a sist of the process to enable the parties to have the prescribed or substituted rate ascertained might have been inevitable. But this is very different from saying that the ordinary civil court is deprived of jurisdiction to enforce the contract of employment, including the payment of wages due. Difficulties of a much more formidable character no doubt attach to the present action, for in it there is a question as to what is the prescribed or substituted rate, and the only machinery by which that rate can be ascertained had been swept out of existence before the action was raised. I do not imagine for one moment that the civil court is any more competent to arrogate to itself the highly technical function of fixing a prescribed or substituted rate— now that the Ministry's special statutory powers in that regard are abolished—than it was before. But if it should be the case that before 30th September 1920 the prescribed or substituted rate applicable to the wages of workwomen of the same class as the pursuer had been competently ascertained under the statutory procedure, I for my part see no difficulty in the civil court applying that rate in an action raised after 30th September 1920 with regard to wages payable prior to that date. If, on the other hand, no such prescribed or substituted rate had been ascertained, then I do not see what foundation the pursuer could make for her

case. These considerations, however, raise no question going to jurisdiction. For the reasons just explained I agree with the learned Sheriff and his Substitute in thinking that the plea of "no jurisdiction" cannot be sustained.

The present action is the sequel to proceedings instituted under the proviso to sub-section (1) of section 5 of the Wages (Temporary Regulation) Act before the local Munitions Tribunal for Glasgow (being a Munitions Tribunal of the second class) by the pursuer's trade union. These proceedings were instituted during the period of temporary wages regulation. Their object was the same—in the interest of Singer's sewing-machine workwomen generally as a class—as that of the present action in the interest of the pursuer individually. In those proceedings the trade union rested their case on the contention that the Award No. 174 of the Court of Arbitration, dated 25th January 1919, applied to Singer's sewing-machine workwomen, and entitled them to the war advance of 5s. per week granted by said award in addition to the amounts they were then receiving as wages. This 5s. is the 5s. sued for in the present action. The award in question applied to workwomen in engineering shops, boiler shops, and foundries. Singer's answer was that their Sewing Machine Factory fell under none of these descriptions. On 5th April 1920 the Judge of Appeal, before whom the proceedings in the case had come, remitted the case (under section 2 (2) of the Act) for a report by the Minister of Labour as to whether there was any "prescribed" or "substituted" rate applicable to the class concerned—being that to which the pursuer belongs—and if so what was the prescribed or substituted rate for that class. The terms of the interlocutor making this remit are perfectly unambiguous, and were none other, in my opinion, than was necessary in order to determine the question presented in the case. The result of this remit was the award of the Industrial Court of 4th August 1920, No. 428. In terms of that award it was reported (first) that Singer's Sewing Machine Factory was an engineering shop and therefore within the Award No. 174 above mentioned, as extended by the Order of the Minister of Labour No. 260 of 26th February 1919; (second) that the prescribed rates applicable to workwomen of the pursuer's class were 5½d. per hour plus 11s. per full ordinary week, or in the case of piece workers such prices as would enable a woman of ordinary ability to earn 25 per cent. over and above such time rate plus 11s. per full ordinary week; and further (third) that for such prescribed rate there had been substituted by said Order of the Minister of Labour, No. 260, of 26th February 1919, a war advance of 5s. per full ordinary week plus said prescribed rates. It will be seen that this award, while it affirmed the trade union's contention that war advance of 5s. provided by the award of the Court of Arbitration, No. 174, applied to workwomen of the pursuer's class, gave no support to the contention that the 5s. was an addition to the amounts (whatever those might be) which each such workwoman was actually receiving as wages in Singer's Sewing Machine Factory. On the contrary it treated the 5s. as a war advance on the then "prescribed (*i.e.*, minimum) rate of wages, which advance along with the wages calculated at that rate constituted the "substituted" (minimum) rate. At this stage the proceedings instituted by the trade union were abruptly terminated as a result of the Industrial Courts Act 1919 on 30th September 1920. But before that occurred the Award of the Industrial Court, No. 428, of August 1920 had, *prima facie* at any rate, established both the original "prescribed" and the "substituted" rate for workwomen of the pursuer's class. It is not disputed that the amounts actually received by the pursuer as wages during the period covered by the action, whether as piece worker or as time worker, were in excess of wages calculated at the "substituted" rate as ascertained by this Award No. 428. But it is maintained for the pursuer that this award misinterpreted the Award No. 174. I do not think this line of argument is open to the pursuer. The Award No. 428 exactly and precisely answered the appeal Judge's remit made to the Industrial Court, and in my opinion it finally answers it so far as workwomen of her class are concerned so long as it stands unreduced. But it is only due to the very full and anxious argument presented to say that I do not think there was any misinterpretation. The pursuer's argument is that the Award No. 174 gave a war advance of 5s., not on any statutory or compulsory minimum scale of wages, but on the actual amounts then being received as wages by women of the pursuer's class in Singer's works. But paragraph 9 of the award itself makes it clear that the award was dealing (by way of advance) not with wages actually received but with certain "rates in force on 11th November 1918 as modified" by the advance of 5s. granted by the award, and that those rates so modified were to be the "substituted rates"—*i.e.*, the minimum rates—for the purposes of the Wages (Temporary Regulation) Act 1918. The rates in question were those in engineering shops, boiler shops, and foundries. The rates in force on 11th November 1918 in such establishments were those directed by the Minister of Munitions under section 6 of the Munitions of War (Amendment) Act 1916 and section 4 of the Munitions of War Act 1917. These rates are set out in the Statutory Rules and Orders of 1918, No. 546, dated 8th May 1918, and also in the Statutory Rules and Orders of the same year, No. 1073, dated 28th August 1918. From the first of these it appears that there was a defined time rate convertible into a minimum piece rate according to a prescribed method, and (paragraph 41) a war advance of 6s. per full ordinary week. From the second it appears that a further war advance of 5s. per full ordinary week was given. These two advances make up the 11s. per full ordinary week referred to in Award No. 428. As appears from paragraph 31 of the Statutory

Rules and Orders of 1918, No. 546, these rates in the case of women workers were minimum rates. It may be that in most controlled establishments wages were rarely paid in excess of the amounts calculated on these minimum rates. But it is certain that in Singer's Sewing Machine Factory—I speak of the department of the works in which the pursuer was employed, for I know nothing about the department which became an aircraft munitions factory—the amounts paid in wages were all along calculated on rates higher than those defined in the Statutory Rules and Orders. For reasons which are perhaps obvious the war advance of 6s. per week in No. 546 of 1918 and the further war advance of 5s. in No. 1073 of the same year were given equally to the sewing machine workwomen as to those employed in the aircraft section. This left the amounts actually paid as wages to the sewing machine workwomen considerably in excess of wages calculated at the prescribed or substituted rate including all war advances. When the Wages (Temporary Regulation) Act 1918 was passed it fixed the legal minimum rate by reference to a generalisation of the rates for determining wages in use in each particular class of industry in the particular district of which that class was characteristic, as fixed by the Statutory Rules and Orders then in force, or by awards, or by agreements, or (if there were none such) then as actually in use in the industry and district. This shows clearly that neither the actual rate used in Singer's works for calculating wages, nor (and indeed still less) the amount actually paid as wages by Singer's, provided the measure of the "prescribed" or "substituted" rate for calculating the minimum wage. On the contrary, that measure was to be a generalised figure derived from the rates in use in all (so-called) engineering shops in the whole Glasgow district. It follows that higher rates, used for calculating wages by a particular employer in a large district, are swamped by the normal rate used all over. So it was, no doubt, in Singer's case. The Award No. 428 seems to me, accordingly, to have misinterpreted nothing. The application to piece work (under paragraph 7 of Award No. 174) of the advance of 5s., provided in general terms by paragraphs 5 and 6, refers to "the week's earnings calculated on the present basis." The use of the word "earnings" was strongly founded on by the pursuer, and if the earnings had been described as those actually received by or paid to the workwomen there would have been some support for the pursuer's case. But the meaning of the phrase is made clear from the use of the same expression in several of the other orders and awards—for example, in paragraphs 9 (*b*) and 13 of the Statutory Rules and Orders of 1918, No. 546.

In my opinion the interlocutors appealed against, dealing with the merits, should be recalled and the defenders assoilzied.

LORD SKERRINGTON—I agree with the two Sheriffs and with your Lordship that it is impossible to sustain the defenders' plea to the jurisdiction. The Act 8 and 9 Geo. V, cap. 61, section 1 (1), enacts that employers of certain classes of workmen shall pay wages to every workman at a rate not less than what is described as "the prescribed rate applicable to a workman of that class, or such other rate as may be substituted for the prescribed rate by an award of the interim court of arbitration constituted" by the statute. Now the meaning of this plea is that if a workman claims a sum of wages as due to him and in so doing requires to found upon the Act he cannot sue in the ordinary way or in the ordinary courts, but must resort to a special remedy as pointed out by section 5. In other words, his only course is to institute, or to induce his trade union to institute, before the Munitions Tribunal a prosecution against his employer as a person guilty of a statutory offence and liable to a heavy fine, and after this question has been disposed of to move the tribunal to order the employer to pay such sum as appears to it to be due on account of his wages. That procedure strikes one as both singular and inconvenient. Moreover, the statute provides that an employer shall not be liable to be convicted of an offence if he proves that he did not know, and that he could not with reasonable diligence have ascertained, that the wages paid were less than the wages which the statute required him to pay. Yet it is suggested that a workman who knows that no statutory offence was committed by his employer cannot recover his wages unless he institutes a prosecution in which he alleges falsely that such an offence was in fact committed. If that had been the intention of the Act I should have expected that imperative and not merely permissive words would have been used. No doubt the statute assumes that the Munitions Tribunal will act judicially and not capriciously in consenting or in refusing to deal with a civil claim for wages at the instance of a workman, but it is one thing to say that such a tribunal may pronounce an order for payment of wages which appear to it to be due, and a very different thing to say that it must embark upon such an inquiry even if it considers that course to be indiscreet and inconvenient in the circumstances. I cannot construe the statute as impliedly sanctioning the very serious interference with the ordinary rights of a citizen which the defenders' first and third pleas-in-law would involve if they were held to be well founded.

As regards the merits of the pursuer's claim, the matter might, I think, have been properly disposed of by sustaining the fourth plea-in-law stated for the defenders and by dismissing the action as irrelevant. Seeing, however, that a proof has been led, there must be findings in fact, and the defenders are in my opinion entitled to absolvitor. The pursuer's case is that the effect of the statutory orders and awards "was to give certain workers, including the pursuer, an advance of 5s. per week upon the actual sum of remuneration otherwise payable to each worker week by week as at 26th February 1919 and thereafter."—(Cond. 7 as amended). Now the only statutory

document which entitles the pursuer to an advance of wages in any way similar to that which she claims in the present action is the award of 4th August 1920, No. 428. She founds upon that award, and it undoubtedly is and remains the basis of her action. When one turns however to paragraph 11 of this document it appears that the 5s. a week claimed by the pursuer was not given as an advance upon the actual remuneration which was otherwise payable to her as at 26th February 1919, but was given as an advance upon the "prescribed rates" applicable to the pursuer prior to that date. Further, the award obviated all possible misconstruction by defining in paragraph 10 what were the prescribed rates to which the 5s. a-week was to be added, both in the case of time workers and also in the less simple case of piece workers. Accordingly Award No. 428 stands out as a self-contained and unambiguous document which clearly and definitely negatives the pursuer's claim. That was of course obvious to the pursuer's counsel, and accordingly they resorted to the bold course of asking us to accept the award as binding and authoritative in so far as it entitled the pursuer to an advance in her rate of wages of 5s. a week from 26th February 1919 onwards, but to reject it as officious and idle in so far as it defined the rate of wages to which the 5s. in question fell to be added. Reasoning of that kind will not do. Even, however, if one goes behind Award No. 428 to the earlier orders and awards they do not help the pursuer's case. No doubt the word "earnings" is occasionally used with reference to the remuneration of pieceworkers. Obviously, however, this expression as there used did not refer to "the actual sum of remuneration" payable to each worker, but referred to the manner in which the general rate of wages applicable to a particular class of time workers was directed to be translated so as to apply to piece workers of that class. It was not and could not be argued that there was a fundamental difference in principle between the "prescribed rate" in the case of a time worker and the "prescribed rate" in the case of a piece worker, the former being a general rate and the latter the actual rate of remuneration in the case of a particular worker. Accordingly I agree with your Lordship as to the manner in which the action should be disposed of.

LORD CULLEN—I am of the same opinion. As regards the plea of no jurisdiction, I agree that it is not well founded, for the reasons your Lordships have given. As regards the merits, the Award No. 428 of the Industrial Court was pronounced in response to a reference made to that Court by the Local Munitions Tribunal in course of proceedings under a complaint by the workers' union against the Singer Manufacturing Company, alleging a contravention by that company of section 1 of the Wages (Temporary Regulation) Act 1918 in respect of their failure to pay to women and girl workers, including the pursuer, the prescribed rates of wages. The terms of reference were—"Question as to whether there is a prescribed or substituted rate applicable to the class of workers concerned, and if so, what is the prescribed or substituted rate for that class." By the award the Industrial Court found, under the first part of the reference, that the Singer establishment was an engineering shop within the meaning of the Award No. 174 of the Interim Court of Arbitration, extended by Order No. 260, made by the Minister of Labour, and that there were prescribed rates applicable to it as such. Under the second part of the reference the Industrial Court found by the award that there were certain prescribed rates therein stated, and further that Award No 174 had established substituted rates amounting to the stated prescribed rates plus 5s. a full ordinary week in the case of the women concerned of eighteen years of age and over, and 2s. 6d. a full ordinary week in the case of the girls concerned under eighteen years. The additional 5s. per full ordinary week above mentioned is the subject-matter of the pursuer's present claim.

Now, without going into detail as to the prescribed rates applicable to the class of workers to which the pursuer belonged stated in Award No. 428, it is sufficient to say that if these rates be taken and the 5s. per week added, the substituted rate applicable on that footing to the pursuer—that is to say, the statutory mimimum rate which the defenders were bound to pay her—amounted to less than the remuneration which she *de facto* received, so that there was no contravention of the Act by the defenders.

Accordingly the efforts of the pursuer's counsel were directed to getting behind Award No. 428 and then going to Award No. 174, which they said had established minimum rates different from and higher than the prescribed rates set forth in Award No. 428 as those to which the 5s. per week fell to be added. The first way in which they endeavoured to get behind Award No. 428 was by saying that that document did not in its terms profess to make an authoritative pronouncement of its own as to what the prescribed rates were, but merely referred the parties to Award No. 174 as applicable to the case. I can only say that I am unable to read Award No. 428 in this way. The defenders' counsel, alternatively, endeavoured to get behind Award No. 428 by saying that the reference to the Industrial Court on which it proceeded was *quoad* the second part of it incompetent, and the award, so far, invalid, in respect that the Local Munitions Tribunal had no power to make any reference which involved the Industrial Court in construing any previous order or award, such as Award No. 174. It rather seems to me that on this footing the first part of the reference—and therefore the whole of the Award No. 428—would be invalid, inasmuch as it involved the Industrial Court in construing the words "engineering shops" in Award No. 174. I am not at all convinced that there was any incompetency attaching to the reference or consequent invalidity in the award. But the conclusive answer to the pursuer's conten-

tion is that not only has she no plea against the validity of the award, but, on the contrary, she makes it part of her case on record.

I do not think that there is any discrepancy between Award No. 428 and Award No. 174. The meaning and effects ascribed by the pursuer's counsel to the latter award seemed in various respects to be better fitted to promote the pursuer's claim than they were to square with and carry out the scheme of the Act of 1918. But for the reasons I have stated, I think it is to Award No. 428 that we must go to find out what the pursuer's statutory claim amounted to, and as on that footing she received wages in excess of the statutory minimum, I agree with your Lordships in the conclusion that the defenders are entitled to absolvitor.

LORD SANDS—I agree with your Lordship in the chair upon both points. In regard to jurisdiction, if prior to the expiry of the Wages Act 1918 the employer had been paying to the employee less than the law required, the employer was the debtor of the employee in a sum of money. This is an action by an alleged creditor against an alleged debtor for payment of an alleged debt, and the jurisdiction of the Court in such a matter is undoubted.

As regards the other facts of the case there is only one point upon which I shall say a word.

I am not sure whether it is proper that I should here take any cognisance of the fact that I happened to be the Judge in the Munitions Appeal Tribunal. But in view of the fact that in substance the process has been a continuous one since the application was first made to the local tribunal, and in view of the test character of this case, I shall venture to explain the procedure which has been canvassed in this appeal.

In the appeal to the tribunal the respondents in that appeal had two lines of defence. In the first place they maintained that their works were not engineering works and that none of the definitions in regard to prescribed rates applied to them, their business being an isolated one. In the second place, they maintained that *esto* that their works were engineering works, they were a special branch of engineering with rates of their own. This was a vital point, for the Minister's Order No. 260 does not extend the 5s. increase to all engineering works *eo nomine*, but only to those workpeople who had the same prescribed rates as the original applicants who got the award of 5s. under Award No. 174. It was essential for the determination of the case to ascertain what was the applicants' prescribed rate, if any.

No doubt, theoretically, the tribunal might have determined the questions whether the works were engineering works, and if so whether they were a distinct branch, and then have made a remit as to prescribed rates. But that could have been satisfactorily done only after a proof. Such procedure, however, would not have been in accordance with the intendment of the Legislature, which contemplated that these practical questions should be determined by the expert advisers of the department who are familiar with trade customs, classification, and nomenclature, and the adjustment of wages questions.

That was the position when the remit was made. The Industrial Court were instructed to determine as to the prescribed rate, but it was quite contemplated that incidentally to such determination they must determine whether Messrs Singer's works were engineering works, and if so whether they were a special branch with rates of their own.

The respondents (as the case is a test one I use the plural) in the present appeal were successful under this reference—at least so they deemed at the time—and the present action was brought to give effect to the award of the Industrial Court. In these circumstances it is somewhat difficult for the respondents now to impugn that award or any part of it.

I understand, however, their case to be this, and I concede that it has a certain plausibility. The points in dispute when the remit was made were whether the present appellants had any prescribed rate for their female workers, and if so, was it a special one for a particular branch of the industry. But the Industrial Court having determined that they had a prescribed rate and that they were not a special branch of the industry with a rate of their own as such, it was a work of supererogation for the tribunal to specify what the amount of the rate was. Dispute upon this question, it is said, had not arisen when the remit was made.

There may be a certain plausibility in this contention, but its value to the respondents depends upon the validity of a supposition which seems absolutely fatal to their case. That supposition is that the general prescribed rate which the Industrial Court accurately specified and applied to them does not really apply to them because they have a special prescribed rate of their own, not as a separate branch of the industry but as a particular shop. But if they have a special prescribed rate of their own they cannot claim the 5s. advance. Sir Robert Horne's Order No. 260 extends that advance only to those "to whom the prescribed rate in question is applicable." It is not in dispute that this prescribed rate is the general rate for female munitions workers (S.R.O. 1918, No. 546) as the same is accurately specified in the Award No. 428. If the rate specified in Award No. 428 does not apply to the respondents, if a different prescribed rate applies to them, then S.R.O. 1919, No. 260, under which the 5s. advance is claimed, does not apply to them.

Upon the other grounds of judgment I concur with your Lordship in the chair.

I have only to add that in treating the case as one of implied contract the learned Sheriff has gone outside the pleadings in the cause. But apart from this it appears to me that this was a weekly contract renewable weekly. Though the appellants resolutely refused to pay the additional 5s.

nevertheless the respondent chose to remain in their employment. I cannot see how in this situation an implied contract to pay this additional 5s. can be inferred from the actings of parties.

I agree that on the merits the appeal must be sustained.

The Court pronounced this interlocutor—

". . . Sustain the appeal: Recal the interlocutors of the Sheriff and Sheriff-Substitute dated prior to 4th May 1922 in so far as they repel the defenders' fourth plea-in-law: Recal the interlocutors of 4th May 1922 and 26th June 1922: Find in fact (1) that the pursuer was employed by the defenders at their factory in Clydebank from 1917 till 11th February 1921; (2) that she was employed till 3rd July 1920 as a piece worker and thereafter till 7th October 1920 as a time worker; (3) that the Award No. 174, the Order No. 260, and the Award No. 428 all applied to the class of workman to which the pursuer belonged and to the said factory as from 26th February 1919; and (4) that during the whole period covered by the claim the defenders paid to the pursuer wages at rates (or based upon piece prices) in excess of the following rates (or piece prices):—*Time Workers.*—5½d. an hour plus 11s. a full ordinary week, plus 5s. a full ordinary week. *Piece Workers.*—Such piece prices as enabled every woman of ordinary ability to earn at least 25 per cent. over the above time rate of 5½d. per hour, plus 11s. a full ordinary week, plus 5s. a full ordinary week: Find in law that for the period in respect of which the claim is made the defenders have discharged all obligations resting upon them in relation to the pursuer under the Wages (Temporary Regulation) Act 1918 and the said awards and order: Therefore assoilzie the defenders from the conclusions of the summons, and decern. . . ."

Counsel for the Pursuer—Mackay, K.C.—Patrick. Agents—Maxwell, Gill, & Pringle, W.S.

Counsel for the Defenders—Macmillan, K.C.—Robertson, K.C.—Strachan. Agents—J. W. & J. Mackenzie, W.S.

Friday, March 9.

FIRST DIVISION.

[Lord Morison, Ordinary.

"VITRUVIA" S.S. COMPANY, LIMITED *v.* ROPNER SHIPPING COMPANY, LIMITED.

Ship—Collision—Damages—Detention for Repairs—Existence of Other Defects not Attributable to Collision but Discovered during Detention—Liability for Loss Due to Detention.

A ship injured but not rendered unseaworthy by collision, liability for which was admitted by the other vessel, was diverted for repair of the damages occasioned by the collision. During the detention for repairs a defect not attributable to the collision was disclosed. This defect, though serious, did not render the vessel unseaworthy. *Held*, in respect that it was not proved that the defect was such as to have prevented the ship from successfully completing her next voyage had she been allowed to proceed with it, that the loss due to detention fell to be borne by vessel responsible for the collision.

Ship—Collision—Damages—Detention for Repairs—Loss of Profits—Proof of Loss.

A ship damaged by collision, liability for which was admitted, was, at the time when she was diverted for repairs, under charter to perform four voyages, the second, third, and fourth of which her owners were free to carry out at dates most convenient to themselves, provided only that the voyages were consecutive. The ship was detained for twenty-two days by the repairs, and the four voyages were thereafter completed in time to enable her to fulfil the contract. It was not proved that the ship had suffered any specific loss in consequence of the detention after the completion of the fourth voyage. *Held* that the ship responsible for the collision did not, owing to the absence of evidence of specific loss, escape liability for damages for loss of profits due to detention.

Interest—Ship—Collision—Damages—Cost of Repairs—Loss of Profits Due to Detention—Period from which Interest Runs.

The owners of a ship which had been injured by collision, for which liability had been admitted, paid for the repairs, the amount having been agreed between the parties before payment. *Held* (1) that the owners were entitled to interest on the cost of repairs from the date on which they had paid the account, the extent of the repairs, and the liability therefor not being disputed; but (2) (*rev.* judgment of Lord Morison, Ordinary) that interest was not chargeable on the damages for loss of profits due to detention until the date of the decree decerning for payment of the principal sum.

The "Vitruvia" s.s. Company, Limited, Glasgow, *pursuers*, brought an action against the Ropner Shipping Company, Limited, West Hartlepool, *defenders*, for £16,929, 6s. 3d., with interest at 5 per cent. from 25th January 1920, being damages sustained by the pursuers as the result of a collision between the s.s. "Vitruvia," belonging to the pursuers, and the s.s. 'Carperby," belonging to the defenders, on 25th January 1920.

The parties averred—"(Cond. 3) By letter, dated 11th March 1920, from Sir R. Ropner & Company, Limited, the managing owners of the 'Carperby,' to Gow, Harrison, & Company, the managing owners of the 'Vitruvia,' liability for the collision was