of the difference between what he earned before the accident and what he was earning at said light job after 5th August 1902, and I awarded him compensation at that rate, with expenses to respondents."

The question of law was—Was the arbiter right in the circumstances stated in awarding the appellant fifty per cent. of the difference between what he earned before the accident and what he earned when he had partially recovered?

Argued for the appellant—It was clear from the manner in which the Sheriff-Substitute explained his decision, and from the terms of the question of law stated by him, that in making his award he proceeded on the view that the employers' liability was limited to fifty per cent. of the difference between the appellant's wages before the accident and his wages after the accident. That view was wrong in law—*Geary* v. *William Dixon, Limited*, May 12, 1899, 4 F. 1143, 36 S.L.R. 640; *Parker* v. *William Dixon, Limited*, June 19, 1902, 4 F. 1147, 39 S.L.R. 663. The question put in the case should accordingly be answered in the negative, and it should be made clear that the Sheriff-Substitute's discretion in making the award was not limited in this way.

Argued for the respondents—It certainly was within the discretion of the Sheriff-Substitute to award the sum given, and accordingly the question of law put should be answered in the affirmative.

LORD PRESIDENT—There seems to be no doubt that the Sheriff-Substitute in making his award proceeded upon the assumption that he was limited to fifty per cent. of the difference between the workman's wages before the accident and the wages which he was able to earn after the accident. The views so clearly expressed in the cases of *Geary* and *Parker* do not appear to have been brought under the Sheriff-Substitute's notice. This being so, the proper course seems to be to answer the question in the negative and remit to the Sheriff to make an award not so limited, but fixed with reference to the facts and the law of the case.

LORD ADAM—There seems to be no dispute between the parties as to the true construction of the statute, but the question in the case is ambiguous, and it rather appears to me that an unqualified answer in the negative might lead to misunderstanding, and that we ought to make a finding that the Sheriff-Substitute is not limited in awarding compensation to fifty per cent. of the difference between the wages before and after the accident, and "therefore" answer the question in the negative.

LORD M'LAREN—I rather incline to the suggestion of Lord Adam to make a special finding, and with that finding remit to the Sheriff-Substitute to award compensation.

I presume it would be perfectly clear that it is within the discretion of the Sheriff-Substitute under that remit to award the same sum as he has already awarded should he consider it necessary to meet the justice of the case to do so. The point is that the award is not necessarily to be limited to fifty per cent. of the difference between the wages earned by the workman before the accident and the wage he was able to earn after the accident.

LORD KINNEAR—I agree with your Lordships.

The Court pronounced this interlocutor:—

"Answer the question put in the case in the negative: Find that the appellant is entitled to compensation under the Workmen's Compensation Act 1897, and that the Sheriff as arbiter may, if on the evidence he sees fit, award as compensation to the appellant the whole amount of the difference between his average earnings before the injury and the average amount of his earnings after the injury, provided that it does not exceed fifty per cent. of the average earnings before the injury and does not exceed £1 per week: Find the appellant entitled to expenses, and remit the account thereof to the Auditor to tax and to report."

When the Auditor's report came up for approval and decree a remit was made to the Sheriff to proceed in terms of the findings in the above interlocutor.

Counsel for the Appellant—Campbell, K.C.—W. Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Respondents—Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Saturday, May 16.

FIRST DIVISION.

SUMMERLEE AND MOSSEND IRON AND STEEL COMPANY, LIMITED, *v.* HUGHES.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37) *Sched. I., sec.* 1 (*a*), *sub-sec.* ii.—*Amount of Compensation—Dependants Partially Dependent upon Earnings of Deceased Workman—Funeral Expenses.*

The arbitrator, in determining the amount payable as compensation under the Workmen's Compensation Act 1897, Sched. I., sec. 1 (*a*), sub-sec. ii., to a person in part dependent upon the earnings of a deceased workman, is entitled to take into consideration expenses disbursed by the claimant for the workman's funeral.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule, is in these terms:—"*Scale and Conditions of Compensation:—Scale.*—(1) The amount of compensation under this Act shall be (*a*) —where death results from the injury—(i.)

if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum; and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer; (ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or in default of agreement may be determined on arbitration under this Act to be reasonable and proportionate to the injury to the said dependants; and (iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds."

This was a case stated for appeal by the Sheriff-Substitute (A. O. M. MACKENZIE) at Airdrie in an arbitration under the Workmen's Compensation Act 1897, in which John Hughes (respondent) claimed from the Summerlee and Mossend Iron and Steel Company, Limited (appellants), the sum of £150 in respect of the death of his son Edward Hughes. In the case the Sheriff-Substitute stated as follows:—"(1) That on 23rd September 1902 the respondent's son Edward Hughes, while in the employment of the appellants at their works in Coatbridge, sustained injury by accident arising out of and in the course of his employment, which resulted in his death; (2) that at the time of his death the said Edward Hughes lived in family with his father, and regularly paid over to him his whole wage, amounting to 18s. a-week, for the family maintenance, receiving back only one or two shillings as pocket-money; (3) that three other sons, John, Hugh, and Francis, also lived in family with their father; (4) that of these sons John and Hugh were at work, and earned respectively 25s. 4d. and 14s. a-week, and that each paid over the whole wage to his father for the family maintenance, receiving back a little as pocket-money; (5) that the respondent's average weekly wage at the time of his son Edward's death amounted to about 26s.; (6) that the respondent was in part dependent on the earnings of his said son at the time of his death, but that the amount of his dependency did not exceed 2s. 6d. a-week; (7) that the respondent has paid the sum of £7, 4s. in defraying his son's funeral expenses—and on these facts I found in law that the respondent is entitled to compensation from the appellants under the Workmen's Compensation Act 1897, and awarded the respondent the sum of £26, 14s. as compensation (being 2s. 6d. a-week for 156 weeks, and the beforementioned sum disbursed by the respondent as his deceased son's funeral expenses), with interest at the rate of 5 per cent. per annum from 22nd January 1903 until payment, and found him entitled to £3, 6s. of expenses."

The question of law for the opinion of the Court was—"Was the arbiter entitled to add to the compensation payable to respondent on account of his partial dependency the sum disbursed by the respondent in connection with funeral expenses of his deceased son?"

Argued for the appellants—If the Sheriff-Substitute had granted the claimant the sum awarded, and had not stated that it included £7, 4s. of funeral expenses, the appellant could have had nothing to say. But the Sheriff-Substitute had expressly explained that the award included £7, 4s. of funeral expenses, and under the Workmen's Compensation Act 1897 he had no power to include any sum for funeral expenses in the compensation awarded. It was only in the case dealt with in sub-section iii. of sec. 1 (*a*) of the First Schedule of the Act, where the deceased workman leaves no dependants, that funeral expenses could be an element of compensation under the Act. Under sub-secs. i. and ii. of the schedule the considerations with reference to which the amount of compensation was to be fixed excluded funeral expenses. The three sub-sections of the First Schedule defining the liability of the employer presented "three alternative cases which are mutually exclusive"—*per* Lord President Robertson in *Fagan* v. *Murdoch*, July 18, 1899, 1 F. 1179, 36 S.L.R. 921. The English case *Bevan* v. *Crawshay Brothers, Limited* [1902], 1 K.B. 25, while adverse to the contention of the appellants, was contrary to the decision in the English Courts in *Dalton* v. *South-Eastern Railway Company* (1858), 4 C.B. (N.S.) 296, on the construction of the Fatal Accidents Act 1846 (9 and 10 Vict. c. 93), sec. 6.

Argued for the respondent—The Sheriff-Substitute, in determining "the sum reasonable and proportionate to the injury to the said dependant" under sub-section ii., was at liberty to take into account the funeral expenses. The fact that the dependants had been compelled to pay these expenses was part of the injury in the statutory sense sustained by them. The decision of the Court of Appeal in England in *Bevan* v. *Crawshay Brothers, Limited* (*supra*) was directly in favour of this view. Of course the arbitrator could not award a sum for funeral expenses over and above the limit prescribed by the schedule, but if the whole sum awarded by the arbitrator was within the limit, the funeral expenses were a proper element to be considered in ascertaining the sum proportionate to the injury. The observation of Lord President Robertson in *Fagan* v. *Murdoch* (*supra*) as to the sub-sections of the First Schedule being mutually exclusive was made wholly with reference to the question before the Court in that case, viz.,

whether compensation having been already awarded under sub-section i. a subsequent claim for compensation by partial dependants under sub-section ii. was competent. Lord President Robertson's observations had therefore no relevancy in a question as to the elements to be considered under the respective sub-sections in fixing the compensation.

LORD PRESIDENT—[*After narrating the facts*]—It was maintained on behalf of the appellants that the Sheriff had erred in taking the funeral expenses into account, because, as they contended, under the First Schedule of the Workmen's Compensation Act the amounts payable in the various cases are specified, and that it is in one case only, viz., that of a workman who has been killed in the course of his employment leaving no dependants that it is provided by sub-section (iii.) of (1) of the First Schedule to the Act that the reasonable expenses of his medical attendance and burial not exceeding £10 shall be allowed. The appellants argued that in a case like the present, where the workman left a person partially dependent upon his earnings, no allowance could be made in respect of the medical and funeral expenses incurred by such person, because in the schedule (i.) and (ii.) the maximum sum as defined did not include any power to award expenses of medical attendance and burial. It is true that no such provision is expressly made in the sub-section providing for the case of a workman leaving dependants in part dependent upon his earnings, but this, in my judgment, does not preclude the taking of expenses of medical attendance and burial into account if the maximum specified is not exceeded, and it was decided in the Court of Appeal in England in the case of *Bevan* v. *Crawshay Brothers* [1902], 1 K. B. 25, that an arbitrator, in assessing the amount payable as compensation under the Act, Schedule (1)(*a*), sub-sec. (ii.), to a person in part dependent upon the earnings of a deceased workman, is entitled to take into account the expenses of the workman's funeral, where such expenses were in fact incurred by the person in part dependent. This is a decision of high authority, and I entirely concur in the reasons assigned for it by the learned Judges by whom it was decided.

It was maintained by the appellant that the decision of this Division of the Court in *Fagan* v. *Murdoch*, 1 F. 1179, was adverse to this view, but all that was decided in that case was that there can be no claim by a person only in part dependent upon a workman at the time of his death if there is in existence a person who is wholly dependent upon him. The point which we have now to decide did not arise in that case, and I do not think that the decision can be held to determine it either directly or by necessary implication.

For these reasons I am of opinion that we should answer the question put by the Sheriff-Substitute by saying that in fixing the compensation payable to the respondent he was entitled to take into account the sum disbursed by the respondent in payment of the funeral expenses of his deceased son.

LORD ADAM—The question really is whether or not, in fixing compensation for the death of a workman in a claim by partial dependants, it is competent to take into consideration the medical and funeral expenses which the claimants have had to disburse. It seems to me clear that these are elements which the arbiter is entitled to take into consideration, subject to the limit that the amount awarded shall not exceed the sum which might competently be awarded to a person wholly dependent.

LORD M'LAREN—On this question two cases were cited to us. There is first the case of *Bevan*, L.R. [1902], 1 K.B. 25, decided by the English Court of Appeal, which is a direct authority in favour of the conclusion reached by the Sheriff-Substitute. That case decides that funeral expenses may be taken into account in awarding compensation to persons who were partially dependent on the deceased workman, and who have disbursed these expenses. It is said, however, that the case of *Fagan*, 1 F. 1179, in this Court, contains expressions (in the opinion of the Lord President) which are inconsistent with the conclusion reached in the case of *Bevan*, L.R. [1902], 1 K.B. 25. I have read that opinion, and I do not think that the words used by the Lord President as to the three classes of claims—those by persons wholly dependent, by partial dependants, and by personal representatives—being mutually exclusive, really touch the present question, because the Lord President was not dealing with the elements to be taken into account in fixing the amount of compensation. The question he was dealing with was whether a claim by a partial dependant was competent where compensation had already been awarded to a person wholly dependent. Perhaps, as the case has been cited, and as I took no part in the judgment, I may be allowed to say that I could not have concurred in the decision in so far as it implies that partial dependants are not entitled to participate in the sum awarded as compensation where there are persons existing who were wholly dependent. It seems to me that the Court had not in view articles 4 and 5 of the sub-section, which recognise a partition of compensation between partial dependants and persons wholly dependent. But I think the true ground of decision was that the compensation had been already appropriated, and that there cannot be a second award of compensation in favour of a new set of claimants.

It is clear that funeral expenses are to be taken into account where a claim is made by the deceased's personal representatives under article 3, and it seems to me to be an illogical inference to say that because such expenses are given when the claim is by the personal representatives, they are not to be given when the claim is by dependants of the deceased. It is a sufficient reason why funeral expenses should not be ex-

pressly mentioned as an invariable element of compensation in claims by dependants that they would only be an element to be taken into consideration when they had been paid by the dependants, and it is only in that case that they could be allowed by the arbiter.

LORD KINNEAR—I agree with your Lordships. The arbiter is to fix such compensation as may be reasonable and proportionate to the injury of the dependants. Now, *prima facie*, I am disposed to say that if a dependant is obliged to provide medical attendance or to pay the funeral expenses of the deceased, that is a part of the injury to such dependant, and that the arbiter is entitled to take such expenses into account in estimating the reasonable and proportionate compensation. It seems to me that this is the plain meaning of the sub-section, the construction of which was very fully considered in the case of *Bevan* v. *Crawshay Brothers, Limited*, L.R. [1902], 1 K.B. 25. I respectfully agree with the judgment of the Master of the Rolls. We are told that that decision is in conflict with the previous case of *Dalton* v. *South-Eastern Railway Company* on the construction of Lord Campbell's Act. The learned Judges in England seem to have thought the two cases distinguishable. But however that may be, we are not required to consider the construction of a statute which does not apply to Scotland; and as to the construction of the statute actually under consideration, I have no difficulty in following the reasoning of the Judges in the case of *Bevan*.

I also agree with what your Lordship in the chair and Lord Adam have said as to the form of the question. A direct answer in the affirmative might be misleading. I think the finding of the Court ought to be that the arbiter in fixing compensation is entitled to take into account sums of money which may have been disbursed in funeral expenses.

The Court answered the question of law in the affirmative.

Counsel for the Appellants — Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Counsel for the Respondent — George Watt, K.C.—Munro. Agents—Macpherson & Mackay, S.S.C.

HOUSE OF LORDS.

Thursday, April 30.

(Before the Lord Chancellor (Halsbury), Lord Shand, Lord Davey, and Lord Robertson.)

SCOTTISH PROVIDENT INSTITUTION *v.* ALLAN.

(*Ante* June 4, 1901, 38 S.L.R. 683, and 3 F. 874.)

Revenue — Income Tax — Interest from Securities Abroad — Remittances of Interest or Repayment of Capital—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, Case* 4.

A mutual insurance society in Scotland was assessed for income tax under the fourth case of Schedule D of the Income Tax Act 1842 upon certain sums remitted to them from Australia in 1898. They maintained that they were not liable to be so assessed, upon the ground that the sums so remitted were not remitted in payment of interest but in repayment of capital. Between 1885 and 1890 the society had sent various sums to Australia for investment. The interest on these investments was received by the society's representatives in Australia and paid into a bank account there, and prior to 1893 it was not brought to this country but invested in Australia. In and after 1893 certain sums were remitted to Scotland from Australia, and in 1898 the sum upon which income tax was now claimed was so remitted. After all these remittances had been made there still remained in Australia a sum greater than the total of all the sums originally sent out for investment. *Held* (*aff.* judgment of the First Division) that the remittances to this country having been made by the representatives of the society from their bank account in Australia, in which repayments of capital had been immixed with interest, and the particular remittances not having been definitely identified with any particular repayments of capital, the proper inference in the circumstances was that the remittances were made in payment of interest, and that the society was liable to be assessed for income tax upon the sums remitted.

This case is reported *ante ut supra.*

The Scottish Provident Institution, appellants in the Court below, appealed to the House of Lords.

Counsel for the respondent were not called upon.

At delivering judgment—

LORD CHANCELLOR—So far as I am concerned I think this is really a question of fact. The question is, what inference can properly be drawn from the facts as stated by the Commissioners.

The broad facts, and the only facts I shall consider, are these—this is a large