were commenting on a case still *sub judice*.

I cannot myself understand how your Lordship draws any justification of this article from the fact that the appeal had not actually been taken, ten days only having elapsed since the judgment had been pronounced, and *ex hypothesi* the question of appeal being under consideration. To support such an excuse is, I think, entirely a begging of the question—which I conceive to be, whether it is allowable in the public prints to throw contempt on a judgment of a judge of first instance while the matter is *still sub judice*, in terms which infer that the superior Court will be chargeable with the same support of bribery and corruption if they should come to refuse the appeal.

It may be that such comment will have no effect upon the course of justice in this Court. But it is a style of comment which tends to obstruct the untrammelled exercise of the Court's jurisdiction, and in principle is a form of contempt of Court which ought not to be allowed to go unnoticed. The respondents have very properly stated at the bar that if their article is held by the Court to contain improper matter, as such was not their intention, they will at once tender their apologies to the Court. I think that they should be allowed the opportunity of doing so.

LORD MACKENZIE—I agree with your Lordship in the chair. I do not think that this is an article of which this Court should take any notice. The position of the case was that the matter had taken end in the Sheriff Court. The Sheriff-Substitute had taken one view and the Sheriff had taken another. It is in reference to the view taken by the Sheriff that the article is written. There is in it, admittedly, no misstatement of fact. The article contains a criticism of the view of the law taken by the learned Sheriff. I have referred to the note appended to the interlocutor by the Sheriff-Substitute, and it appears to me that so far as regards the criticism of the law it is a restatement of the argument which had appeared to the Sheriff-Substitute to be right.

No doubt the article proceeds to say that if the law is as stated by the Sheriff it "cuts at the root of the purity of our civic administration." It appears to me that that is comment upon a matter of public importance which it was within the right of the newspaper to make.

There is only one matter in the argument of Mr Constable on which I say a word. It would, of course, be no protection to the publishers of the newspaper, if the article were objectionable, that they had disclosed the source from which their information was obtained. The fact that their communication came from a ratepayers' association and that the names of the chairman and secretary of the society were disclosed would be no protection to the newspaper.

None of the cases cited appears to me to touch the present case. We were not referred to any case in which comment was made on a judgment that had been given. This is not the case of an attempt to present a view of an action which has not yet come to judgment, and it differs entirely from the class of case in which newspapers present a view of the facts of a case which is to go before a jury.

I do not think that an article of this kind would have the remotest effect upon the mind of any judge who came to consider the question.

LORD SKERRINGTON—I agree with your Lordship in the chair and Lord Mackenzie. I should have taken a serious view of this article if the Corporation's position had been that they denied that in fact corporate funds had been applied in the manner objected to, and if the newspaper writer had proceeded to constitute himself judge of that question, and thereby arrogate to himself the functions of a judicial tribunal. But I find nothing of that kind. All that I find is a criticism of the state of the law as that law was laid down by the Sheriff.

I think that anyone is entitled to criticise the law provided that he does so in a manner which is not disrespectful to the court, and which is not calculated to interfere with the administration of justice. In this article I find nothing disrespectful to the Sheriff, and it is idle to suggest that it could affect, or was intended to affect, the decision of a pure question of law in the event of an appeal.

The Court pronounced this interlocutor—

"The Lords having heard a statement made by counsel for the respondents the Corporation of the City and Royal Burgh of Glasgow relative to an article which appeared in the minuters' newspaper of 9th March 1918 commenting on this cause, and having also heard counsel for the compearing minuters, find it unnecessary to take any action in the matter: Further find the said respondents liable to the said compearers in the expenses of their compearance," &c.

Counsel for Glasgow Corporation—Sandeman, K.C.—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Counsel for the Compearers—Constable, K.C.—A. M. Stuart. Agents—Graham, Johnston, & Fleming, W.S.

Tuesday, May 28.

SECOND DIVISION.

[Sheriff Court at Glasgow.

FARME COAL COMPANY *v.* MURPHY.

Workmen's Compensation — Expenses — Tender—Discretion of Arbitrator—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule* (7).

The discretion as to the expenses of an arbitration under the Workmen's Compensation Act 1906, conferred upon the arbitrator by the Second Schedule (7) of that Act, must be exercised judicially, and consequently the arbitrator

should follow the general rule of awarding expenses to the successful party in the application unless there are facts found which he considers justify a deviation from the rule.

Circumstances in which the Court found, in the absence of any facts being set forth in the stated case as justifying a deviation from the general rule, that the arbitrator was not entitled to find no expenses due to or by either party, the employers, who had previously offered their injured employee a sum higher than that awarded him in the application, having been virtually successful therein.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), as applied to Scotland, Second Schedule (7) enacts—"The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the . . . Sheriff."

In an arbitration under the Workmen's Compensation Act 1906 in the Sheriff Court at Glasgow, John Murphy, coal miner, Boag's Land, Condorrat, Croy, *respondent*, claimed compensation from the Farme Coal Company, Limited, coalmasters, 31 St Vincent Place, Glasgow, *appellants*, in respect of an accident arising out of and in the course of his employment with the appellants. Previous to the arbitration the respondent had refused an offer by the appellants of compensation as for partial incapacity for work at the rate of 13s. per week.

On the 7th May 1918 the Sheriff-Substitute (D. J. MACKENZIE) awarded compensation at the rate of 10s. per week and found no expenses due to or by either party. At the request of the appellants he stated a Case for appeal.

The Case stated—"2. That on 12th September 1914, while working in the appellants' Farme Colliery near Rutherglen, the respondent sustained personal injury by accident arising out of and in the course of his employment with the appellants by a stone falling on his back; that he was thereby incapacitated for work; that his back shows lesion of the spinal vertebræ, probably due to disease in early life. 3. That the respondent's average weekly earnings amounted to £2, 2s. 4. That the appellants paid compensation to the respondent at the rate of 20s. per week in respect of said accident from the date thereof until 12th March 1917, and then offered compensation as for partial incapacity at the rate of 13s. per week, which respondent refused. 5. That the respondent since 12th March 1917 has been fit for light work which has been offered to him by the appellants, at which he could earn about 32s. per week.

"I found in law that the appellants were due compensation to the respondent as for partial incapacity as from 12th March 1917. I assessed the same at the sum of 10s. per week, and awarded same accordingly till the further orders of Court. I found no expenses due to or by either party."

The *questions of law* were—"On the foregoing facts was I entitled to find no expenses due to or by either party? On the foregoing facts was I bound to award expenses to the appellants"?

This *Note* was appended—"The medical evidence in this case is largely on the side of the defenders (appellants) in respect of the lesions which appear to exist in the pursuer's (respondent's) vertebræ, that is, that they are of old standing and due to disease. At the same time the accident undoubtedly took place, and the pursuer (respondent) was for a time wholly incapacitated. I am advised that he should be asked to do light work, although considerable muscular injury resulted from the accident, evidence of which still persists. The defenders (appellants) at one time offered him 13s., which he refused. They are prepared to give him work at which he could make 32s. per week, and the difference from his old wage is thus 10s. In this case, looking to the persistent nature of the injury and the changed conditions both as regards wages and otherwise, I am disposed to allow him this difference as partial compensation. But having refused a better offer he is not entitled to expenses."

Argued for the appellants—The first question of law ought to be answered in the negative and the second question in the affirmative. An arbitrator ought to exercise his discretion as to expenses judicially. In the present case he had failed to do so, the circumstances having provided no good reason for giving no expenses to or by either party. Counsel referred to *Fife Coal Company* v. *Feeney*, 55 S.L.R. 223.

Argued for the respondent—The first question of law ought to be answered in the affirmative and the second question in the negative. Where the arbitrator was given a discretion the Court would be very slow to interfere. The question of expenses was one which was left to the discretion of the arbitrator. There was no evidence that the respondent, if he had accepted the compensation at the rate of 13s. per week offered him by the appellants, could have earned the difference between that sum and his former wages by competition in the open market. There was no engagement by the appellants to employ the respondent. Counsel cited *Mikuta* v. *William Baird & Company*, 1916 S.C. 194, *per* Lord President Strathclyde at p. 197, 53 S.L.R. 160.

LORD JUSTICE-CLERK—I am sorry I cannot agree with the result at which the arbitrator has arrived. The respondent was injured on 12th September 1914, and from that date down to 12th March 1917 he received compensation at the rate of 20s. per week in respect of total incapacity for work. Then on 12th March 1917 the employers offered him compensation as for partial incapacity at the rate of 13s. per week, which he refused. The present application was then brought, and after inquiry—which seems to have been limited to two things, (first) whether the man was still totally incapacitated or only partially incapacitated; and (second) if he was partially incapacitated, whether he was entitled to 13s. a week—the arbitrator found that he was only partially incapacitated, and that

he was fit for light work at which he could earn about 32s. a-week, and found him entitled to 10s. a-week—which was 3s. less than his employers had offered before the proceedings were instituted. The arbitrator found no expenses due to or by either party.

In his note the only explanation which the arbitrator gives as to the course he followed with regard to the expenses is that having refused a better offer the pursuer is not entitled to expenses. It seems to me that if the workman refused a better offer, not only is he not entitled to expenses, but the employers are entitled to expenses, because if he had taken the 13s. they offered before these proceedings were taken no proceedings would have been necessary, and the workman would have been 3s. a week better off than he is now.

It appears to me that the proper result here is that the pursuer ought to have been found liable in expenses. As has already been pointed out, these proceedings are not judicial proceedings in the strict sense of the term; and here, before any proceedings were initiated, a larger sum was offered than the pursuer ultimately got. I see no reason—and the arbitrator suggests no reason—why the ordinary result should not follow and the pursuer be found liable in expenses.

I propose to your Lordships that we should answer the first question in the negative and the second in the affirmative, and remit to the arbitrator to proceed accordingly.

LORD DUNDAS—I agree, without any doubt or hesitation, that the questions should be answered as your Lordship proposes, and I have nothing to add.

LORD SALVESEN—I am of the same opinion. In the case of the *Fife Coal Company* v. *Feeney*, 1918, 55 S.L.R. 223, to which we were referred, I stated what I considered was the law applicable to a case of this kind, and if there had been any evidence that the arbitrator had applied a judicial discretion to the disposal of the question of expenses, I for my part should not have been disposed to interfere even if I thought he had exercised his discretion wrongly. But the circumstances here, as disclosed, are that on 12th March 1917 an offer of partial compensation of 13s. per week was made on the footing that at that time the respondent was fit for light work. The respondent refused that offer, and thereupon proceedings were taken. The contest between the parties was whether he was wholly incapacitated or only partially incapacitated, and in that contest, which involved the expense of an inquiry into the state of his health, the respondent was wholly unsuccessful. He was found to be fit for light work as from 12th March when the offer was made.

No doubt it remained for the arbitrator to consider in the circumstances how much he ought to award in respect of the workman being only partially incapacitated for work. But when the arbitrator came to apply his mind to that question he found that 10s. was the maximum that he could award in view of the wage that the appellants were willing to pay the man for light work. And then he was referred to the appellants' offer of 13s., and he not unnaturally said that the man had refused a better offer than the award that he could give him. But he seems to have considered that the only question before him was whether in those circumstances he could award expenses against the appellants or whether he ought to give expenses to neither party. He seems not to have considered the obvious point—that the respondent ought to be found liable in expenses as for wholly unnecessary procedure.

In those circumstances I do not think the arbitrator exercised a judicial discretion in reference to this question of expenses, and accordingly I agree that the questions must be answered as your Lordship proposes.

LORD GUTHRIE—The respondent's only case is that it does not appear that there was any concurrence, before the arbitration was initiated, that he should be entitled to 13s. per week, plus what he earned for light work, namely, 32s., which was 3s. above the amount of his previous full wage. That view, while not impossible on the statements in the case, does not necessarily follow, and it seems to me to be inconsistent with the last sentence of the arbitrator's note, which expressly says that the workman had refused a better offer.

The Court answered the first question of law in the negative, and the second in the affirmative.

Counsel for the Appellants—Constable, K.C.—Stevenson. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Christie, K.C. — Macquisten. Agents—Simpson & Marwick, W.S.

Thursday, March 28.

FIRST DIVISION.

[Lord Cullen, Ordinary.

LORD ADVOCATE *v.* MARQUESS OF ZETLAND.

Superior and Vassal—Casualties—Redemption—Vassal Holding of Crown—Feudal Casualties (Scotland) Act 1914 (4 *and* 5 *Geo. V, cap.* 48), *sec.* 5 (1) (*a*) *and* (2).

In an action brought by the Crown against a vassal to fix the amount payable for redemption of the casualties of his holding under the Feudal Casualties (Scotland) Act 1914, *held* (*rev.* Lord Cullen, *dis.* the Lord President) that the Crown was not entitled to one year's free rent as composition upon the entry of a singular successor of the last-entered vassal, and that consequently that rent could not be taken as the highest casualty for the purpose of calculating the compensation payable as redemption.