LORD SKERRINGTON—By his will the testator gave to his widow the whole free income of the residue of his estate. By his codicil he revoked that to a certain extent, and there is a question whether the revocation was intended to operate in the more limited sense for which the widow contends, or in the more drastic sense which is contended for by the third parties. I have come to the conclusion that your Lordships are right in thinking that the revocation was intended to operate to the more limited extent only.

The Court answered the first and third questions of law in the affirmative and the second and fourth in the negative.

Counsel for the First and Second Parties—Chree, K.C.—Mitchell. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for the Third Parties—Blackburn, K.C.—W. T. Watson. Agents—A. & W. M. Urquhart, S.S.C.

Friday, June 21.

FIRST DIVISION.

[Sheriff Court at Airdrie.

GORMLEY *v.* SCOTTISH IRON AND STEEL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation—Memorandum of Agreement—Recording—Notice to Approved Society—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule, secs.* 9 (*d*) *and* (*e*) *and* 10—*National Insurance Act* 1911 (1 *and* 2 *Geo. V, cap.* 55), *sec.* 11 (1) (*c*).

A workman was injured on 2nd October 1916. His employers paid him compensation at the rate of £1 per week till 11th December 1916—in all £10. On 12th December 1916 they paid him £6, and took a receipt from him whereby in consideration of the £16 received by him from his employers he discharged all claims he might have against them "under the Workmen's Compensation Act 1906, the Employers' Liability Act 1880, or at common law in respect of the injury sustained by" him on or about 2nd October 1916. On 13th December 1916 the workman returned to work, and thereafter recorded a memorandum of the agreement. No intimation of the agreement was made to the workman's approved society. Further compensation was thereafter claimed, the workman's approved society suing in his name. *Held* (*dis.* Lord Skerrington) that the agreement was not one of which the employers were bound to give notice to the approved society in terms of the National Insurance Act 1911, section 11 (1) (*c*), and that the agreement being validly recorded the application for further compensation was incompetent. The approved society found *liable in expenses.*

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Second Schedule—"(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by Act of Sederunt, by the committee or arbitrator or by any party interested to the [sheriff-clerk], who shall, subject to such Act of Sederunt, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a [sheriff] court judgment: Provided that . . . (*d*) where it appears to the [sheriff-clerk], on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum . . . ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the [sheriff], who shall, in accordance with Act of Sederunt, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and (*e*) the [sheriff] may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum . . . has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just. (10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, . . . unless . . . he proves that the failure to register was not due to any neglect or default on his part."

The National Insurance Act 1911 (1 and 2 Geo. V, cap. 55) enacts—Section 11—"(1) Where an insured person has received or recovered, or is entitled to receive or recover, . . . from his employer . . . any compensation . . . under the Workmen's Compensation Act 1906 . . . in respect of any injury or disease, the following provisions shall apply: . . . (*c*) Where an agreement is made as to the amount of such compensation as aforesaid, and the amount so agreed is less than ten shillings a-week, or as to the redemption of a weekly payment by a lump sum, under the Workmen's Compensation Act 1906, the employer shall, within three days thereafter, . . . send to the Insurance Commissioners, or to the society or committee concerned, notice in writing of such agreement giving the prescribed particulars thereof. . . . (2)

Where an insured person appears to be entitled to any such compensation, . . . and unreasonably refuses or neglects to take proceedings to enforce his claim, it shall be lawful for the society or committee concerned either (*a*) at its own expense to take in the name and on behalf of such person such proceedings. . . ."

John Gormley, puddler, Coatbridge, *appellant*, being dissatisfied with an award in the Sheriff Court at Airdrie in an application by him for compensation under the Workmen's Compensation Act 1906 against the Scottish Iron and Steel Company, Limited, Coatbridge, *respondents*, appealed by Stated Case.

The Case stated—"This is an arbitration under the Workmen's Compensation Act 1906, in which the Sheriff as arbitrator is asked to award the pursuer and appellant compensation for the following periods:—From 22nd March to 19th April inclusive, from 27th April to 30th May inclusive, from 5th to 13th June inclusive, from 18th to 25th June inclusive, and from 5th to 26th July inclusive, all in the year 1917, at the rate of £1 sterling per week, and from 6th November 1917, during the period of the pursuer and appellant's incapacity, at the rate of 25s. sterling per week, or such other rate as may be found to be due to him by the defenders and respondents, with interest thereon at the rate of 5 per cent. per annum on the first and successive weekly instalments till paid, and with expenses.

"The pursuer and appellant makes the following averments:—1. That on or about the 2nd day of October 1916 the pursuer and appellant was engaged in his usual occupation in the Victoria Works belonging to the defenders and respondents, and was injured in his left eye through a burning accident. 2. On the day on which the accident occurred the pursuer and appellant gave notice thereof to the defenders and respondents in terms of the Workmen's Compensation Act 1906, and an application was made for compensation under the Act, and the defenders and respondents paid the pursuer and appellant compensation up to the 12th day of December 1916, when the defenders and respondents made a final payment and took a final discharge from the pursuer and appellant. The said final payment and discharge were not intimated to the pursuer and appellant's approved society under the National Health Insurance Act in terms of section 2 (1) (c) of that Act. 3. Owing to the said accident the pursuer and appellant was incapacitated for work for the period from 22nd March to 19th April, when he entered the Eye Infirmary in Glasgow and his injured eye was operated upon there. He was further incapacitated for the following periods owing to the said accident:—From 27th April to 30th May, from 5th to 13th June, from 18th to 25th June, and 5th to 26th July, and from 6th November onwards, all in the year 1917. The said periods of incapacity for work arise from the inflammation in the pursuer and appellant's said left eye, and are directly attributable to the accident on 2nd October 1916, which is not admitted by the defenders and respondents. 4. The average wage of the pursuer and appellant in the employment of the defenders and respondents prior to the date of the said accident was over £2 per week.

"The defenders and respondents plead, *inter alia*—1. That the pursuer and the appellant having recovered from the accident returned to work on 13th December 1916, that a memorandum of agreement terminating compensation was signed by pursuer and appellant and recorded in the special register kept at Airdrie on 27th December 1916, and that intimation thereof to the pursuer and appellant's approved society is not required by section 11 (1) (*c*) of the National Health Insurance Act. 2. That the pursuer and appellant had made no claim on the defenders and respondents subsequent to the recording of said memorandum. A claim had been made against defenders and respondents by the Amalgamated Society of Steel and Iron Workers of Great Britain, having their registered office at Gordon Chambers, 90 Mitchell Street, Glasgow, against whom a claim had been made by the pursuer and appellant for sickness benefit for the periods referred to, that the present action is in reality raised by the said society and not by the pursuer and appellant, and that the action is incompetent and should be dismissed with expenses against said society.

"The case was heard before me on this date (1st February 1917), when it was admitted by the parties that the amount of compensation paid to the pursuer and appellant was at the rate of one pound sterling per week from the date of said accident to the date of the said agreement, a period of ten weeks, that the said sum of six pounds mentioned in said agreement was of said date paid to the pursuer and appellant by the defenders and respondents, and that the pursuer and appellant granted the said final discharge in the following terms:—'Received from The Scottish Iron & Steel Co. Limited, 105 St Vincent Street, Glasgow, the undernoted sums, being compensation due me under The Workmen's Compensation Act 1906, during my total incapacity for work caused through accident while in your employment on 2nd October 1916 in Victoria Works.

Date of Payment, 1916.	Amount, 16 weeks at 20s.			Signature of Claimant.
Oct. 16	£2	0	0	Maggie Gormley for J. Gormley
,, 23	1	0	0	Maggie Gormley for J. Gormley
,, 30	1	0	0	Maggie Gormley for J. Gormley
Nov. 6	1	0	0	Maggie Gormley for J. Gormley
,, 13	1	0	0	Maggie Gormley for J. Gormley
,, 20	1	0	0	John Gormley
,, 27	1	0	0	John Gormley
Dec. 4	1	0	0	John Gormley
,, 11	1	0	0	John Gormley
,, 12	6	0	0	John Gormley
	£16	0	0	

Date returned to work, 13th December 1916.

'*Final Discharge.*

'Received the sum of Sixteen pounds, being the amounts detailed on this form in full settlement and discharge of all claims I may have against The Scottish Iron & Steel Co. Limited, under The Workmen's Compensation Act 1906, The Employers

Liability Act 1880, or at common law, in respect of injury sustained by me on or about the second day of October 1916.

Date 12-12-16.

£16 0 0 (Signature)(Signed)John Gormley.
Witness (Signed) John. Henderson.
Address Victoria Iron Works.
Witness (Signed) William Leitch.
Address Victoria Iron Works, Coatbridge.'

"Thereafter the memorandum of agreement was recorded as aforesaid in the following terms:—'The claimant claimed compensation from the respondents in respect of injury to his left eye by burning caused by accident in the employment of the respondents at the Victoria Iron Works, Coatbridge, on or about 2nd October 1916. The question in dispute, which was the amount of compensation, was determined by agreement. The agreement was made on or about the 12th day of December 1916, and was as follows:—That the respondents pay the claimant the sum of Six pounds sterling in addition to the compensation already paid to him, which sum the claimant agrees to accept in full settlement of all claims competent to him against the respondents. It is requested that this memorandum be recorded in the special register of the Sheriff Court of Lanarkshire at Airdrie. (Signed) John Gormley, claimant. To the Sheriff Clerk, Court House, Airdrie'; and when I found this application for an award of compensation under the Workmen's Compensation Act 1906 was incompetent in respect that by an agreement between the parties of 12th December 1916, of which a memorandum was recorded in the special register kept at Airdrie on 27th December 1916, the pursuer and appellant had discharged all claims competent to him under the said Act, and dismissed the application, and found the pursuer and appellant liable in expenses."

The *question of law* was—"Whether in the circumstances the action is incompetent?"

The *note* of the Sheriff-Substitute (LEE) appended to his award was—"The pursuer was injured in his left eye by an accident while working as a puddler in the employment of the defenders on 2nd October 1916. The defenders paid compensation at the full weekly rate of £1 till 11th December, and on 12th December they made a further payment to the pursuer of £6, on which the pursuer granted a final discharge acknowledging to have received the sum of £16 (the aggregate of the payments already referred to) 'in full settlement and discharge of all claims I may have against the Scottish Iron and Steel Company, Limited, under the Workmen's Compensation Act 1906, in respect of injury sustained by me on or about the second day of October 1916.' A memorandum of this agreement was recorded at Airdrie on 27th December 1916. The pursuer now applies for an award of further compensation in respect of various periods of alleged incapacity from the injury during March, April, May, June and July 1917, and for a continuing award from 6th November 1917.

"A memorandum having been recorded the agreement which it embodies is binding upon the parties, and where the agreement includes a final discharge of claims under the Act future arbitration proceedings are effectually barred. The only exception to this is in the provisions of Schedule II (9) (*e*), but even if this agreement can properly be regarded as an agreement as to the redemption of a weekly payment by a lump sum, the pursuer cannot found on Schedule II (9) (*e*), because its operation is limited to a period of six months from the date of recording, and that period is long past. In any case there is no averment of any good ground for removing the record from the register.

"The pursuer accordingly founds solely on the fact that the final payment and discharge were not intimated to his approved society under the National Health Insurance Act 1911, section 2 (1) (*c*). This Act certainly provides for notice being given by the employers within three days of any agreement as to the redemption of a weekly payment by a lump sum, but there is nothing in the provision or elsewhere in the Act to make an agreement invalid as between the workman and the employer in respect of failure to give notice. The failure may give the approved society an action of damages against the employer, though it is noticeable that this is not specially provided for in the same way as in the case of an insured person neglecting or refusing to take proceedings to enforce an apparent claim. But whatever may be the rights or remedy of the approved society, any plea founded on the failure to give notice seems to me to be clearly *jus tertii* to the workman, who is not entitled to claim that because the statutory notice was not given to a third party he has the right to ignore an agreement duly entered into and recorded in terms of the Workmen's Compensation Act.

"In my opinion, however, this is not an agreement of the kind specified in section 2 (1) (*c*) of the National Health Insurance Act 1911, and it did not require to be notified to the approved society. It is arguable that this was not an agreement for the redemption of a weekly payment at all, because it appears on the face of the agreement that incapacity had ceased and the workman was to return to his work the next day. It was an agreement acknowledging that compensation for the period of incapacity had been duly paid and that that period having ended the workman's claim in respect of the injury had been fully settled. That is not the redemption of a weekly payment, which surely implies that incapacity still continues, and with it the obligation on the employer to continue weekly payments of an ascertained amount. That certainly appears to me to be the sense in which the term 'redemption of a weekly payment' is used in both the Workmen's Compensation Act and the National Insurance Act. But there is a further limitation which seems to have escaped the pursuer's notice, and which affords I think a complete answer to his contention. The redemption of which notice to the approved society is required by the National Insurance Act is limited by the

words 'under the Workman's Compensation Act 1906.' The words of the section are, 'where an agreement is made . . . as to the redemption of a weekly payment by a lump sum under the Workmen's Compensation Act 1906 the employer shall . . . send notice in writing,' &c. Now an agreement as to redemption under the Workmen's Compensation Act can only be the agreement authorised by Schedule I (17) of the Act, which by its specific terms does not come into operation until a weekly payment of constant amount has been continued for not less than six months — *per* Fletcher Moulton, L.J., in *Calico Printers' Association, Limited* v. *Higham*, 5 B. 97. As the agreement in the present case was made only ten weeks after the injury was sustained it cannot have been under Schedule I (17). Agreements to redeem within six months are not disallowed by this section, but they are not agreements made under it, and consequently are not agreements of which the employer is bound to give notice to the approved society under the provisions of the National Insurance Act 1911.

"For the reasons stated, I am of opinion that this application must be dismissed as incompetent."

Argued for the appellant—An insurance society had a title to sue if a workman being entitled to compensation unreasonably refused or neglected to sue—National Insurance Act 1911 (1 and 2 Geo. V, cap. 55) section 11 (2). If, as in the present case, their title was challenged, the challenge ought to have been stated before the arbitrator, and if not stated then could not be taken on appeal. But, in any event, the society had a title to sue, for the workman had neglected to enforce his claim in the sense of that section by accepting an inadequate sum. The society was entitled to notice of the agreement—National Insurance Act 1911, section 11 (1) (*c*)—the object being to enable them to object to the recording of the agreement on the ground of inadequacy—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Second Schedule, sections 9 (*d*) (*e*) and 10. Inadequacy merely opened the right to object to the recording of the agreement; it was not a ground for removal of the recorded agreement from the register so that the want of notice to the society deprived it of the only right it possessed to protect itself. Further, section 10 of the Second Schedule applied, for the recording of the agreement was irregular in respect that an essential step, viz., giving notice to the society, had been omitted. Further, the respondents were barred from pleading the recorded memorandum against the society, for it was due to their neglect that the society had not been able to state objections to the recording. The case should be remitted to the arbitrator for the statutory procedure to be carried out regularly—*Baird & Company* v. *Ancient Order of Foresters*, 1914 S.C. 965, 51 S.L.R. 819. The society did not claim to sue as interested parties in the sense of section 9 of the Second Schedule—*Bonney* v. *Hoyle & Sons, Limited*, [1914] 2 K.B. 257. An agreement made before a claim for compensation had been made or weekly payments had been paid need not be but might be recorded under the Act—*Ryan* v. *Hartley*, [1912] 2 K.B. 150. In the present case the agreement was either an agreement for less than 10s. a week or for redemption of weekly payments by a lump sum and as such required notice to be given.

Argued for the respondents—The proceedings were really at the instance of the insurance society. It had no title. It was not a party interested—*Benney's* case (*cit*). Neither had it a title under the National Insurance Act 1911, section 11 (2), for the workman had discharged his whole claims and therefore was not a person who "appeared to be entitled" to compensation —*Rushton* v. *Skey & Company, Limited*, [1914] 3 K.B. 706. The agreement in question was not one of which notice required to be given, for the agreement was not one for a payment of less than 10s. a week; neither was it an agreement for the redemption of weekly payments by a lump sum, for that meant redemption at the instance of the employer under section 17 of the First Schedule. Further, and in any event, a discharge of all competent claims was a different thing from a redemption of weekly payments to become payable. Further, even if notice had been given, the society could not have challenged the recording of the memorandum, for notice had to be given whether it was proposed to record the memorandum or not. The application was incompetent.

At advising—

LORD PRESIDENT—I consider that the learned arbiter has reached a correct conclusion in this case and that the application ought to be refused. My reason is that the agreement expressed in the receipt dated the 12th December 1916 does not fall within the class of agreements mentioned in section 11 (1) (2) of the National Insurance Act 1911. Neither of the parties to the agreement has any fault to find with it. Both parties are thoroughly satisfied with its terms. But the appellant maintains that within three days of its date it ought to have been intimated by the respondents to the approved society in which he was insured under the National Insurance Act. It is agreed that it was not so intimated. The question is, did it require intimation? Now there are two classes of agreements, and two only, which in terms of the section require to be thus intimated. First, agreements between employers and workmen under which the employers agree to pay to the workman compensation at the rate of less than 10s. a-week. Second, agreements as to the redemption of a weekly payment by a lump sum under the Workmen's Compensation Act. The agreement before us falls within neither category. On the contrary, it is an agreement under which the employers, having paid the workman certain weekly sums, ten in number, and amounting in all to £16, being compensation to the workman under the Act during his total incapacity for work caused by the accident, the workman accepts the sum as

in full settlement and discharge of all his claims. On the day following the workman returned to work and continued at it, earning (I assume) his full wages down till the 22nd of March 1917. Both parties agreed that the appellant had completely recovered from the result of the accident. And accordingly the appellant expressly avers that the respondents paid him compensation up to the 12th December 1916, when the respondents "made a *final* payment and took a *final* discharge from the appellant." Under these circumstances it appears to me to be idle to contend that this sum of £16 so paid and accepted was either a payment to the appellant of less than 10s. a-week, or was payment of a lump sum down to redeem weekly payments under the Workmen's Compensation Act 1906. On the contrary, as it expressly bears, it was payment for "sixteen weeks at 20s." a-week. And in this case there never had been any weekly payments made which would have continued but for the agreement to pay a lump sum. To use the words of the learned arbiter—"It was an agreement acknowledging that compensation for the period of incapacity had been duly paid, and that, that period having ended, the workman's claim in respect of the injury had been fully settled. That is not the redemption of a weekly payment, which surely implies that incapacity still continues, and with it the obligation on the employers to continue weekly payments of an ascertained amount." If these views be sound it follows that the agreement made in this case, which in every particular is unchallenged and unchallengeable by those who made it, did not require to be intimated to the approved society. That being so, the application necessarily falls to be refused,

I ought perhaps to add that had I been of opinion that section 11 (1) (*c*) did apply to the agreement in question, then I should not have regarded the recording of the agreement as an unsurmountable obstacle to entertaining this application. In other words, I would have been prepared to remit to the learned arbiter to direct that the statutory procedure should be followed.

I adhere to the judgment I gave in the case of *Baird*, 1914 S.C. 965, 51 S.L.R. 819.

LORD JOHNSTON — Under the National Insurance Act 1911, section 8 (2), and the relative Schedule IV, Part I, the benefits payable to an insured person are "sickness benefit" at the rate of 10s. a-week for a period not exceeding twenty-six weeks, and thereafter "disablement benefit" at the rate of 5s. a-week, ceasing on attaining seventy years of age.

The object of the Legislature in enacting section 11 of this Act is, generally stated, to prevent the insured person securing a double allowance in respect of the same injury, viz. —1st, sickness or disablement benefit under the National Insurance Act, and 2nd, compensation or damages under (*a*) the Workmen's Compensation Act 1906, or (*b*) the Employers' Liability Act 1880, or (*c*) at common law. The effect of section 11 (1) is to limit the burden on the National Insurance fund to the excess, if any, of the statutory benefit over the weekly value of the compensation or damages recovered. To safeguard the fund against claims which would defeat the above object it was apparently thought desirable that the Insurance Commissioners (I use the expression to cover insurance commissioners, approved societies, and statutory committees) should have means of knowing whether insured persons claiming the statutory benefit are enjoying compensation or damages from another source in respect of the injury. Accordingly section 11 (1) (*c*) provides for notice being given by the employer to the Insurance Commissioners wherever he has made an agreement with his employee as to the amount of such compensation, or as to the redemption of a weekly payment by a lump sum, under the Workmen's Compensation Act 1906. It is noticeable, and not a little perplexing, that while the first part of section 11 (1) treats compensation or damages under the Act of 1906, the Employers' Liability Act 1880, and at common law as *in pari casu*, this provision for notice is limited to cases falling under the Act of 1906, and further, to those only under that Act in which the settlement of questions has been by agreement.

So far as I have gone the conclusion must, I think, be that if the Legislature desired to secure that the Insurance Commissioners should not be imposed upon by the workman's concealment of payments in respect of injury from other sources the provision thus made is very inadequate. But it is maintained by the Amalgamated Society of Steel and Iron Workers — an approved society using the name of the workman John Gormley—that it is to be inferred from the section as a whole that its effect was not so limited as at first sight it might appear, and that it gives them, at least in workmen's compensation cases, right not only to be apprised of any agreement as to the amount of compensation, but to intervene to secure that that agreement is a proper one and the amount agreed on adequate, or at anyrate to ignore the agreement if intimation has not been made to them, as is the case here.

I cannot help saying that when section 11 (1) (*c*) is read in its entirety there is much to be said for the suggestion that some such intention was floating in the minds of the framers of the Act.

Assuming that there was such intention, there is, I think, a failure to attain it in any effectual way. For the contention that it was the object of the Legislature to oust the workman in the matter of compensation for injury under the Act of 1906 from all control of his own affairs, to entitle the Insurance Commissioners to step in and take such control, and to intervene in such matters as though the workman were *ab agendo* and under their curatory, I do not think there is any justification in the terms of this section. Yet the unfortunate method of legislation by which it is thought sufficient by a few indefinite words in one Act to introduce a modification of a former Act, which will work a general change of far-reaching

effect, leaves the reader in doubt how far the change was intended to go and how far it has actually been carried. Everything in the Workmen's Compensation Act 1906 is purely fictitious, and nothing can be deduced from natural sequence as a guide to interpretation.

The first difficulty in ascertaining what the Act of 1911, section 11, intends is that while its preamble predicates the case of an "insured person" receiving or being entitled to receive not compensation merely, but compensation or damages, and not from one source only, viz., the Workmen's Compensation Act, but from that source and two others, viz., the Employers' Liability Act and common law, its sub-sections (*a*) and (*b*) and also (*d*) are so drawn as to apply to compensation or damages derived from all three sources, but sub-section (*c*), on the other hand, so as to be applicable only to compensation under the Workmen's Compensation Act, and it is in this last-mentioned subsection only that the notice desiderated is referred to.

But the next difficulty is that where notice is required it is limited to the one case where there has been an agreement for compensation under the Workmen's Compensation Act, and is not extended to the case where such compensation is ascertained by arbitration under the Act.

And there still remains the further difficulty that in no place does section 11 provide for anything to follow on failure to give notice. If the intention of the section was such as contended, one would expect it to be enforced by some sanction. But there is none.

On the best considerations I can give to this legislation so far as it attempts to modify the Workmen's Compensation Act I have come to the conclusion that it wholly fails to reach the present case, and that the approved society which has arrogated to use the workman's name in these proceedings has no right to be here.

Taking the Second Schedule of the Workmen's Compensation Act 1906, section (9) (*d*), and reading it as it must now be held to be amended by the National Insurance Act 1911, section 11 (1) (*c*), it provides that where it appears to the registrar on any information which he considers sufficient that (1) an agreement as to the amount of compensation, or (2) an agreement as to the redemption of a weekly payment by a lump sum, ought not to be registered by reason of the inadequacy of the sum, &c., he may refuse to record the memorandum of agreement when sent to him for registration, and refer the matter, &c. I may say here that I think the agreement in question in the present case is one as to the amount of compensation, but is not one as to the redemption of a weekly payment. Prior to the registration of any memorandum of agreement the registrar must (Act 1906, Second Schedule, section 9 (*a*)) send seven days' notice to the parties interested. This does not, however, require the registrar to send notice to the Insurance Commissioners. They are parties who may have an indirect financial interest, but they are not parties interested in the sense of the statute which alone defines the duties and powers of the registrar. This was so held, and I think correctly, in *Bonney's* case, [1914] 2 K.B. 257.

What is provided in the matter of notice by the Act 1911, section 11 (1) (*c*), is that within three days, not of the lodging of a memorandum for registration, but of the making of an agreement as to the amount of compensation when the compensation agreed on is less than 10s. a-week, or an agreement is made for redemption of a weekly payment by a lump sum under the Workmen's Compensation Act, notice is to be given by the employer to the Insurance Commissioners. But what if the employer fails; the registrar has no knowledge and no concern. His duty and his powers are defined by the Second Schedule of the 1906 Act, section 9, and he deals with the registration accordingly. Moreover, if in doing so he records the memorandum, and the memorandum is conform to the agreement and does not call for rectification under head 9 (*c*), it is only open to the Sheriff as arbiter to order removal of such memorandum from the record—that is in effect to cancel or set it aside—within the limited space of six months, on proof that the agreement was obtained by fraud, undue influence, or other improper means. As six months have elapsed, even if there were no other obstacle in their way, the Insurance Commissioners, who have no *locus standi* themselves even if entitled to use the name of the insured, would be met by this complete answer that the registration was final.

But I think that it is not necessary to appeal to this provision of finality, for the right or remedy of the Insurance Commissioners is entirely limited by section 11 (2) of the Act of 1911 to the case where an insured person who appears to be entitled to compensation or damages has unreasonably refused or neglected to take proceedings to enforce his claim. That is not the case here. I think that the assured attended to his own interest, obtained his compensation, and when he believed that he had recovered discharged all possible claims against his employers. He was a free agent, and now, even if he honestly could do so, makes no suggestion that he was induced by fraud or misrepresentation to grant a discharge. The sub-section to which I have last adverted does not empower the Insurance Commissioners to make that suggestion for him, and there, I think, is an end of the question.

But it is clear that it was the intention of the Act of 1911, section 11, that the insurance fund should have relief so far as possible out of the workman's legal claim to compensation, and it seems to me that the mistake has been in not placing on the registrar the duty of intimating to the Insurance Commissioners the presentation of a memorandum of agreement for registration instead of requiring the employer to intimate to them the making of such an agreement. I think that it is within the power of the Court—I venture to throw this out as a suggestion—to add to the Act of Sederunt, L, xiii, head 11, a paragraph requiring the registrar to send notice of every application for record-

ing a memorandum to the National Insurance Commissioners, leaving them to transmit it to the committee or approved society interested. Though they are not entitled to be made parties to a proceeding under the Act they are persons interested to give information to the registrar, and persons whom the Sheriff as arbiter would be entitled to call before him in this matter of recording a memorandum of agreement, and thus I think the desired end, which is a perfectly legitimate one, might be secured.

LORD MACKENZIE—I agree with the opinion just delivered by your Lordship in the chair.

LORD SKERRINGTON — While I dissent from the judgment which is about to be pronounced, I agree with the way in which the problem has been stated by your Lordship in the chair. The question which we have to decide is whether an irregularity was committed by the employers in failing to intimate to the approved society the agreement of which a memorandum is printed in the Stated Case. If the employers contravene section 11 (1) (*c*) of the National Insurance Act 1911 by not sending notice in writing of the agreement to the society it follows that they cannot take advantage of their own wrong, and that the arbiter should not have decided *de plano* that the application for compensation was incompetent. On the other hand I agree with your Lordship that if there was an irregularity we ought if asked to grant indulgence to the employers, and to allow them now to intimate the agreement to the approved society. It would not be necessary for us to treat as a nullity an agreement the honesty of which is not challenged.

As regards the question whether this agreement was one which it was the duty of the employers to intimate to the approved society, I rather think that Lord Johnston holds the same view as I do, seeing that he described the agreement as one which fixed the amount of the workman's compensation. Indeed, the memorandum expressly bears that the dispute settled by the agreement was of this character. The agreement was made on 12th December 1916, and was to the effect "that the respondents pay the claimant the sum of six pounds sterling, in addition to the compensation already paid to him, which sum the claimant agrees to accept in full settlement of all claims competent to him against the respondents." The accident happened on 2nd October 1916. The workman at once took the appropriate steps for obtaining compensation under the Workmen's Compensation Act 1906. On 16th October he received payment of the sum of £2—that is, £1 a-week, the maximum compensation which he could claim under that Act—and he continued to receive a weekly sum of £1 for eight subsequent weeks as compensation under the same Act. By accepting this compensation he of course barred himself from making any claim against his employers either at common law or under the Employers' Liability Act 1880. I mention that because the receipt purports to discharge all such claims, but this was mere surplusage.

The workman having received his last weekly payment of £1 on 11th December received an additional payment of £6 on the following day. I understood your Lordship to describe all the payments to him as weekly payments, but that is not consistent with the memorandum of agreement. The arbiter seems to have assumed that upon 12th December this workman's whole claim in respect of his injury had come to an end. That certainly was the view of the counsel for the employers, because I asked him what this £6 was paid for, and he said that it was a gratuity. Now that was certainly not so. It was paid as the price of a discharge of all claims, but these could only be claims under the Act of 1906 which might accrue in respect of the same accident subsequent to 12th December 1916. We are familiar with cases where a workman has sufficiently recovered to go back to his former employment and where he is paid his former wages out of charity or self-interest on the part of his employers, or because his services are as valuable as before the accident. His return to work does not prove that his whole claims in respect of his injury have come to an end. His right to a weekly payment is suspended, but his claims in respect of the injury continue until he has recovered to such an extent that the employers would be entitled to obtain from the arbiter an award finally terminating the compensation. If there is a risk of supervening incapacity, as often is the case when an eye has been injured, it is the arbiter's duty to make a nominal award so as not to completely terminate the workman's right to compensation in respect of the injury.

In the note to his award the arbiter stated that "it is arguable that this was not an agreement for the redemption of a weekly payment at all, because it appears on the face of the agreement that incapacity had ceased and the workman was to return to his work the next day." Nothing of the kind appears on the face of the agreement. On the discharge which the workman signed on 12th December somebody afterwards made a note that the man returned to his work on 13th December 1916. I do not impugn the honesty of that note, as I assume that he did so return, but there is no justification for the statement that it was part of the agreement that incapacity had ceased and that the workman was to return to his work the next day. I also assume (though it is not so stated) that for the time being the workman received his former wage. The arbiter then proceeds—"It was an agreement acknowledging that compensation for the period of incapacity had been duly paid, and that that period having ended, the workman's claim in respect of the injury had been fully settled." Accordingly he decides, contrary to the express terms of the agreement, that the £6 was a gratuity. I do not, of course, suggest that the employers admitted that the case was one where incapacity was likely to supervene, but they thought it proper to protect them-

selves against this risk, and the applicant in the present case alleges that incapacity from the same injury did so supervene after about three months. On the other hand the employers deny that the supervening incapacity was due to the original injury. Accordingly the arbiter assumed and decided without inquiry in favour of the employers a question upon which the parties were, and still are, at issue, viz., whether or not there was on 12th December a risk of incapacity supervening from the same injury, or whether the employers would at that date have been entitled to an award terminating the compensation once and for all. I express no opinion upon the question whether the employers' contention is not foreclosed by the terms of the agreement. Of course the burden of proving that incapacity did in fact supervene from the original injury would rest upon the workman.

The memorandum of agreement further demonstrates that the agreement was one which in certain events might, and which in the events which happened in fact did, restrict the workman's compensation to less than 10s. a-week Of course if it so happened that he suffered not more than twelve weeks' incapacity during the rest of his life after 12th December 1916, then of course the lump sum of £6 would give him compensation at the rate of 10s. a-week or upwards, and if the employers chose to run the risk of this happening, they were right not to intimate the agreement. But if they proposed to use the agreement, as they have in fact used it, and used it successfully, as a bar to the workman getting compensation, however long he may be incapacitated—and at the date when the application was made he had been incapacitated for more than twelve weeks—then they are using this agreement for the purpose of establishing that in respect of all incapacity, however prolonged, arising after 12th December 1916, and consequent on the injury of 2nd October, this man must be content with a lump sum of £6. It follows that the agreement has, in the events which the workman avers to have happened, restricted his compensation to less than 10s. a-week. Although it is not necessary to decide the point, my impression is that the agreement may also be described as one for the redemption of a weekly payment by a lump sum. While I assume that the workman's right to a continuance of a weekly payment of £1 a-week was suspended in respect of his returning to his work and receiving his former wage, I see no reason. why parties should not agree to redeem a weekly payment which, *ex hypothesi*, has not been finally terminated but only suspended. I understand the opposite view, but I regard it as unduly strict and technical. Your Lordships do not I believe agree with the arbiter that unless a redemption agreement falls under paragraph 17 of the First Schedule of the Workmen's Compensation Act 1906 it cannot be properly described as an agreement "under the Workmen's Compensation Act 1006" within the meaning of section 11 (1) (*c*) of the National Insurance Act 1911. This opinion seems to me to be clearly wrong.

For the foregoing reasons I think that there was a contravention on the part of the employers of the statutory procedure which it was their duty to observe, and that the consequences already stated ought to follow.

The Court answered the question of law in the affirmative and found the Amalgamated Society of Steel and Iron Workers of Great Britain (the appellants' society) liable in expenses.

Counsel for the Appellant — Constable, K.C.—Ingram. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Respondents — Gentles. Agents—Drummond & Reid, W.S.

Thursday, July 4.

FIRST DIVISION.

[Exchequer Cause.

SUTHERLAND *v.* INLAND REVENUE.

Revenue—Excess Profits Duty—Profits of Trade or Business—Steam Drifter Taken Compulsorily on Charter by Admiralty—Finance (No. 2) *Act* 1915 (5 *and* 6 *Geo. V, cap.* 89), *Part iii, and Fourth Schedule.*

A new steam drifter for fishing was taken from a joint adventure by the Admiralty under compulsory powers, and was thereafter held by the Admiralty upon charter from the joint adventure. Excess profits duty upon the earnings, including therein the payments made under the charter-party, was claimed. The defence was that the chartering was not a trade or business, alternatively that it was not comparable with anything pre-war. *Held* that the joint adventure in letting the drifter to the Admiralty were engaged in a trade or business upon the profits of which they were liable in payment of excess profits duty under the Finance (No. 2) Act 1915, in respect that they were after the charter merely using the same commercial asset to obtain a return in a different way from the former use of it, and there was not sufficient dissimilarity between the two modes of use to render the profits under the charter profits from a different business than that formerly carried on.

The Finance (No. 2) Act 1915 (5 and 6 Geo. V, cap. 89) enacts—Section 38—"(1) There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this part of this Act applies . . . exceeded by more than two hundred pounds the pre-war standard of profits . . . a duty (in this Act referred to as 'excess profits duty') . . ." Section 39—"The trades and businesses to which this part of this Act applies are all trades or businesses (whether continuously