LORD MACKENZIE—I concur. In my opinion the payment was made by the owners of the school simply *qua* owners apart from the business they carry on in the school, and the payment therefore cannot be treated as a deduction from profits under Schedule D.

LORD SKERRINGTON—I agree with your Lordships. The true ground of judgment is stated in a nutshell by the Surveyor of Taxes in Head III (1), where he says — "That the expense claimed had no reference whatever to the business of carrying on the public school, and was not a charge incurred in earning the fees and other income derived by the company from this source, but that it entirely arose in its character not of trader but of property owner."

LORD CULLEN—I am of the same opinion. The obligation for feu-duty with recurring duplicand is incurred to enable the feuar to be the owner of the property irrespective of how he may use it. If he chooses to occupy it for the purposes of his trade or business he is entitled under Schedule D to deduction of the annual value but to no further deduction.

The Court recalled the determination of the Commissioners.

Counsel for the Appellant — Solicitor-General (Murray, K.C.)—R. C. Henderson. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Counsel for Respondents—Wilton, K.C.—Burn Murdoch. Agents—Cornillon, Craig, & Thomas, W.S.

Saturday, July 16.

SECOND DIVISION.

QUILTER *v.* KEPPLEHILL COAL COMPANY, LIMITED.

Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *First Schedule* (3)—*Partial Incapacity—Application by Workman for Review of Compensation—Relevancy of Averment of a General Reduction of Wages.*

Held that a miner had not set forth relevant grounds for asking review of compensation where the sole ground averred was that since his compensation was fixed there had been "a general reduction of wages to the extent of at least 2s. per shift."

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) First Schedule (3), enacts — "In fixing the amount of the weekly payment regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper."

An arbitration was held in the Sheriff Court of Lanarkshire at Hamilton between William Quilter, miner, 118 Main Street, Shotts, *appellant*, and the Kepplehill Coal Company, Limited, *respondents*, to determine the rate of compensation payable to the appellant in respect of partial incapacity due to injuries by accident arising out of and in the course of his employment with the respondents. The appellant being dissatisfied with the decision of the Sheriff-Substitute (SHENNAN) appealed by Stated Case.

The *facts* as stated in the Case were as follows — "(1) That on 26th May 1920 the appellant was engaged in the respondents' employment as a coal miner at Stane Pit, Shotts; (2) that on said date he sustained injuries to his right hand by accident arising out of and in the course of said employment, whereby he was for a time totally incapacitated and is at present partially incapacitated; (3) that the respondents paid the appellant full compensation during the period of his total incapacity, and thereafter 15s. per week in respect of partial incapacity down to 5th February 1921; (4) that the respondents were and are willing to continue payment of compensation at the rate of 15s. per week from said 5th February, but the appellant claims that he is entitled to a higher rate of compensation."

The Case further stated — "The sole ground on which the appellant claims an increase in the rate of his compensation is that since 5th February 1921 the respondents 'refuse to make payment of compensation reasonable and adequate in the circumstances having in view the fact that since 31st January 1921 there has been a general reduction of wages to the extent of at least 2s. per shift.'

"I heard parties' agents on 10th May 1921, and on 16th May 1921 I issued an opinion in which I found that the appellant had not set forth relevant grounds for asking review of compensation. On 27th May 1921 I dismissed the appellant's application.

"I was of opinion that a general fall in the rate of wages did not in itself constitute a change of circumstances which justified the appellant in demanding that his rate of compensation should be increased. I held that the requisite change of circumstances must be one personal to the workman, and not merely a general economic change affecting him in common with uninjured workmen."

The *questions of law* for the opinion of the Court included the following—"2. Was I right in holding that the appellant had not set forth relevant grounds for asking review of compensation?"

The arbitrator appended the following *note* to his award:—"Although in form an original application, this is really a case in which the workman seeks review of the weekly compensation payable to him. He

was injured on 26th May 1920, and the employers paid him first full compensation in respect of total incapacity, and then compensation of 15s. per week in respect of partial incapacity. No payment has been made since 5th February 1921, but the employers have offered and are willing to continue payment of 15s. per week since the date of last payment. The workman, however, claims increase of the compensation to £1 per week. The sole ground on which he basis this claim is 'the fact that since 31st January 1921 there has been a general reduction of wages to the extent of at least 2s. per shift.' There is no other averment of change of circumstances. He does not say that on account of his incapacity he personally is affected by that reduction more than his uninjured fellow-workers.

"In my opinion this averment does not narrate a change of circumstances such as to justify an application for review of compensation. The key to the decision is found in a passage in Lord Shaw's opinion in *Ball* v. *William Hunt & Sons, Limited,* [1912] A.C. 496 (reported also in 1912 S.C. (H.L.) 77—'It is necessary to keep clearly in view in such cases the distinction between inability to obtain work arising as the result of the injured or disfigured condition of the workman, and inability to obtain work arising from the state of the labour market. It does not appear to me to be any part of the scheme of the statute to make the employer liable for a non-employment which is owing to general economic causes. The non-employment, as I say, must be connected with the injury which has been received and with the incapacity for work which has been thereby produced. Even treating that incapacity as inclusive of the case of the impossibility or improbability of obtaining work, as well as of doing it, that impossibility or improbability must be traceable to the thing which has differentiated this workman from his other able-bodied comrades, namely, the injury received.' For 'work' in this passage substitute 'wages,' and the irrelevancy of the present claim becomes clear. The statute does not contemplate that all existing rates of compensation in respect of partial incapacity shall be reviewed at the instance of either party on every occasion of a rise or a fall in the rate of wages. But that would be the effect if the workman's contention in this arbitration received effect.

"Of course, if the workman once gets into a review, a rise or a fall in the rate of wages is one of the circumstances which fall to be considered. But before he can get so far he must aver some relevant change in his circumstances since the existing rate was fixed, and not merely a general economic change which does not affect him personally in any other way than it affects his uninjured fellow-workman. Carried to its logical issue, the workman's argument would entitle him to full compensation in respect of partial incapacity during the present stoppage of the coal industry.

"As the parties may wish to take advantage of this application in order to obtain an award, I have sent the case to the roll before disposing of it finally."

The appellant cited the following cases in argument—*M'Neill* v. *Woodilee Coal and Coke Company,* 1917 S.C. 260, 54 S.L.R. 208, *affd.* 1918 S.C. (H.L.) 1, 55 S.L.R. 15, *per* Lord Justice-Clerk (Scott Dickson) at 1917 S.C. 262, 55 S.L.R. 210; *Tarr* v. *Cory Brothers & Company,* [1917] 2 K.B. 774, *per* Swinfen Eady, L.J., at 776; *Ball* v. *William Hunt & Sons, Limited,* [1912] A.C. 496, 1912 S.C. (H.L.) 77, 49 S.L.R. 711; *Colquhoun* v. *Woolfe,* 1912 S.C. 1190, 49 S.L.R. 911; *Bevan* v. *Energlyn Colliery Company,* [1912] 1 K.B. 63.

The following authorities were cited by the respondents—*Kear* v. *Shelton Iron, Steel, and Coal Company,* 1921, 14 B.W.C.C. 123, *per* Lord Sterndale, M.R., at p. 125; *Malcolm* v. *Thomas Spowart & Company, Limited,* 1913 S.C. 1024, 50 S.L.R. 823, *per* Lord Kinnear at 1913 S.C. 1032, 50 S.L.R. 827, and Lord Mackenzie at 1913 S.C. 1034, 50 S.L.R. 828; *Ball* v. *Hunt, cit., per* Lord Macnaghten at 1912 A.C. 501, 1912 S.C. (H.L.) 78, and 49 S.L.R. 711, Lord Atkinson at 1912 A.C. 504, 1912 S.C. (H.L.) 80, 49 S.L.R. 713, and Lord Shaw at 1912 A.C. 506 and 509, 1912 S.C. (H.L.) 82 and 84, 49 S.L.R. 713 and 715; *Cardiff Corporation* v. *Hall,* [1911] 1 K.B. 1009, *per* Moulton, L.J., at 1017, and Buckley, L.J., at 1026; *Radcliffe* v. *Pacific Steam Navigation Company,* [1910] 1 K.B. 685, *per* Cozens-Hardy M.R. at 688-9.

LORD JUSTICE-CLERK—In this case two questions are submitted to us. [*His Lordship then dealt with the first question and found it unnecessary to answer it.*] The second question raises quite a sharp point of law. It is clearly settled in our procedure under this Act that the arbitrator is not only entitled to determine a question of relevancy but, if the point is quite sharply raised, ought to answer a question of relevancy so as to save needless expense which might result if proof were allowed. Here the workman, seeking to have his compensation increased, avers as the sole ground in support of his application, the respondents "refuse to make payment of compensation reasonable and adequate in the circumstances having in view the fact that since 31st January 1921 there has been a general reduction of wages to the extent of at least 2s. per shift." The learned arbitrator treats that as an averment that has no special significance or relation to the applicant himself, and it seems to me that he is quite right in so treating it. It is a general averment of the economic result which has occurred, confined not even to one place or to one trade, but simply that a general reduction has occurred to the extent of 2s. per shift. There is no suggestion that as a result the disability under which the respondent labours as the result of his accident has led to a less favourable return for his labour than he otherwise would have had. The appellant may want to get a judgment on the point, and he is quite entitled to get it if he makes relevant averments. But it seems to me that he has failed to make a relevant case, as possibly he might

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

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

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

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

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

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

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

Tuesday, July 19.

FIRST DIVISION.

DUNOON PICTURE HOUSE COMPANY LIMITED *v.* BURGH OF DUNOON.

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

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

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

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

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

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

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