stances I am of opinion that the arbitrator's judgment, which one regards with great respect but which is by no means sacrosanct, ought to be recalled, and that the question put by him ought to be answered in the negative.

LORD HUNTER—I also think that the arbitrator here reached a wrong conclusion—not a wrong conclusion on fact, because that is not the question put before us, but a wrong conclusion in law.

The *facts* of the case are these:—The deceased Barkey was engaged in clearing away gas when he was killed by an explosion of gas. Upon that statement of the facts I think a strong presumption is raised that the case is one of an accident arising out of and in the course of the deceased's employment. No doubt it is open to the employers to show that the deceased's representatives are not entitled to get compensation because he had added a peril to his employment by acting in contravention of a statutory regulation. That has been laid down so frequently in the House of Lords that it was a proposition that was not controverted on either side of the bar, and it is quite unnecessary to refer to decisions upon the point. So far as I know, however, the doctrine has always proceeded upon the assumption that it has been established that the person disentitled to compensation has voluntarily added the risk. Now in order to establish a voluntary adding of the risk the onus must, I think, be put upon the employers. If that were not so, as your Lordship has pointed out—and it was pointed out in the course of the argument—it might well be that where an accident had occurred involving the death of many people, and where it was further established that someone must have acted in contravention of a statutory regulation, then the representatives of none of the deceased would be able to recover compensation at all. In the present case the view taken by the learned arbitrator is, that once it has been established that there has been a breach of the regulation which has given rise to the accident, then it is a matter of legal obligation imposed upon the representatives of the parties claiming to prove that the deceased whom they represent was entirely free from any blame connected with the breach of the regulation. That, I think, would be quite an impracticable proposition. I think that in reality the decisions in the House of Lords, when they are carefully read, indicate that where a workman has met his death in circumstances like the present, his representatives would be entitled to recover. And I think, unless the arbitrator had felt himself justified in reaching the conclusion in fact that Barkey had had to do with the breach, he was not entitled to refuse his representatives compensation.

Now I take it from his findings in this case that the arbitrator has not reached the conclusion that Barkey had anything to do with the breach here in question. He says there was no evidence on which he could find one way or the other. If I dealt with the evidence I should reach the same conclusion as your Lordship reached, namely, that *prima facie* at any rate there is nothng to justify an inference adverse to Barkey. I think the learned arbitrator here has erred in throwing the onus upon Barkey's representatives.

LORD CONSTABLE—I am of the same opinion. Upon the facts stated by the arbitrator in this case, and which I need not resume, I think it is reasonably clear that the accident to the deceased man Barkey arose out of and in the course of his employment, and I see no reason to infer that he was a party to the breach of the statute which, in the view of the arbitrator, immediately led to the accident. If contrary views had been expressed by the arbitrator, based upon his particular findings in fact, we should have to consider whether on the authorities quoted by Mr Morton and Mr Russell it was competent for a court of review to reverse inferences in fact which the arbitrator had drawn. But I think it is unnecessary to consider that question, because it appears from his own statement that the arbitrator has really decided the case upon a view of the onus of proof resting upon the parties, which in my opinion is unsound. In other words, he has misdirected himself upon a question of law which this Court is entitled and bound to review.

LORD ORMIDALE and LORD ANDERSON did not hear the case.

The Court answered the question of law in the negative.

Counsel for the Appellants—Wark, K.C.—Paton. Agent—R. D. C. M'Kechnie, Solicitor.

Counsel for the Defenders—Morton, K.C.—Russell. Agents—W. & J. Burness, W.S.

Wednesday, November 1.

FIRST DIVISION.

[Sheriff Court at Dunfermline.

HUTTON AND OTHERS *v.* COLTNESS IRON COMPANY, LIMITED.

Workmen's Compensation—Personal Injury Resulting in Death—Amount of Compensation — Deduction of Weekly Payments—Whether Additional Weekly Sums Payable under the War Additions Acts Deductible—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1), *and First Schedule, Par.* 1 (*a*) (*i*)—*Workmen's Compensation* (*War Addition*) *Acts* 1917 *and* 1919 (7 *and* 8 *Geo. V, cap.* 42, *and* 9 *and* 10 *Geo. V, cap.* 83), *sec.* 1.

A miner sustained injuries through an accident arising out of and in the course of his employment, which subsequently resulted in his death. At the time of his death he was receiving compensation for his injuries in the form of weekly payments, which included the

statutory war additions. *Held* that these weekly war additions did not fall to be deducted from the sum payable to the miner's dependants on his death.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), enacts—"First Schedule, sec. (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, 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 these 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, and any lump sum paid in redemption thereof, shall be deducted from such sum. . . ."

The Workmen's Compensation (War Addition) Act 1917 (7 and 8 Geo. V, cap. 42), enacts — "Section 1 (1). Where any workman is at any time during the period for which this Act continues in force entitled during total incapacity to a weekly payment by way of compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), he shall, whether the incapacity arose before or after the commencement of this Act, be entitled to receive from the person liable to pay the compensation, by way of addition to each such weekly payment payable in respect of any week within the said period, a sum equal to one-fourth of the amount of that payment. (2) The additional weekly sum payable under this Act shall be deemed to be part of the weekly payment under the Workmen's Compensation Act 1906 for the purposes of—(*a*) The provisions relating to the recovery of weekly payments; (*b*) any order made with respect to payment into Court of a weekly payment; (*c*) the provisions of paragraph (19) of the First Schedule to the Workmen's Compensation Act 1906 (which prohibits the assignment, &c., of weekly payments); and shall, notwithstanding that the liability to make the said weekly payment is redeemed subsequently to the commencement of this Act, continue to be payable in the same manner as if that liability had not been redeemed."

The Workmen's Compensation (War Addition) Amendment Act 1919 (9 and 10 Geo. V, cap. 83), enacts—"I. As from the commencement of this Act the additional weekly sum payable under the Workmen's Compensation (War Addition) Act 1917 . . . shall . . . be a sum equal to three-quarters of the amount of the weekly payment."

Mrs Helen Adamson or Yates or Hutton, widow of John Hutton, miner, Alloa, for herself and on behalf of her five pupil children, and Helen and Agnes Yates, her two minor children, *appellants*, being dissatisfied with an award of the Sheriff-Substitute (UMPHERSTON) at Dunfermline in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between them and the Coltness Iron Company, Limited, Blairhall Colliery, Fife, *respondents*, appealed by Stated Case.

The *facts* as stated in the Case were as follows:—"1. On 8th January 1921 John Hutton sustained personal injury by accident arising out of and in the course of his employment with the respondents at their Blairhall Colliery. 2. The said John Hutton died on 20th November 1921, and his death resulted from said personal injury by accident. 3. The claimants and appellants were wholly dependent on the said John Hutton at the date of his death. 4. The respondents admitted liability for compensation in respect of said personal injury by accident sustained by the said John Hutton, and paid to him sums amounting to £80, 10s. as weekly payments in respect of total incapacity. 5. The amount of £34, 10s., included in said £80, 10s., was paid under and in virtue of the Workmen's Compensation (War Addition) Acts 1917 and 1919. 6. The respondents are liable to pay compensation to the claimants and appellants in respect of the death of the said John Hutton. 7. The amount of compensation to which the claimants and appellants are entitled is a sum of £300, under deduction of any weekly payments made to the said John Hutton under the Workmen's Compensation Act 1906.

"On 26th January 1922 I held that the sums paid to deceased by virtue of the Workmen's Compensation (War Addition) Acts 1917 and 1919, by way of addition to the weekly payments under the Workmen's Compensation Act 1906, and amounting in all to £34, 10s., were weekly payments under the Workmen's Compensation Act 1906, and fell to be deducted from the said sum of £300 in terms of section (1) (*a*) (1) of the First Schedule to the Workmen's Compensation Act 1906, and awarded to the claimants and appellants the sum of £219, 10s."

The *question of law* was — "Was I entitled to hold that weekly payments made under and in virtue of the Workmen's Compensation (War Addition) Acts 1917 and 1919 are weekly payments made under the Workmen's Compensation Act 1906, within the meaning of section (1) (*a*) (1) of the First Schedule of the latter Act?"

In a *note* to his award the arbitrator stated—"The claimants are dependants of John Hutton, who died on 20th November 1921 as a result of injury sustained in the respondents' employment on 8th January 1921. Between the date of Hutton's accident and the date of his death his employers paid him as compensation the total amount of £80, 10s., of which sum £34, 10s. was paid in virtue of the Workmen's Compensation (War Addition) Acts 1917 and 1919. The compensation consisted of weekly payments in respect of total incapacity.

"The claimants are entitled to compensation in respect of the death of John Hutton, and the amount of that compensation is £300 under deduction of 'the amount of any weekly payments made under this Act'—Workmen's Compensation Act 1906, Schedule I (1) (*a*) (1). The question in the case is whether the deduction from £300 should be £80, 10s. or £46—in other words, whether the payments made under the War Addition Acts are payments made under the 1906 Act.

"I confess I have not reached my determination of that question with the same confidence as my two colleagues, whose judgments I have had the benefit of considering, and from whom I have the misfortune to differ.

"The War Addition Acts (7 and 8 Geo. V, cap. 42, and 9 and 10 Geo. V, cap. 83) do not provide that they are to be construed as one with the Workmen's Compensation Act 1906. In this respect they are similar to the Workmen's Compensation (Silicosis) Act 1918, and differ from the Workmen's Compensation (Illegal Employment) Act 1918. They provide that where a workman during total incapacity is entitled to a weekly payment under the 1906 Act 'he shall . . . be entitled to receive from the person liable to pay the compensation, by way of addition to such weekly payment,' a sum proportionate to the amount of the weekly payment.

"I do not doubt that this additional sum is compensation in respect of the injury; it can be nothing else. But that does not further the solution of the question to be determined.

"They provide that 'the additional weekly sum . . . shall be deemed to be part of the weekly payment under the' 1906 Act for three specified purposes. They do not add 'and for no other purposes.' This may be implied, but it is not necessarily implied. They go on to provide that the additional payment is not redeemable, as compensation under the 1906 Act is. (But for this provision the weekly payment under the War Addition Acts presumably would be redeemable in spite of the foregoing provision as a weekly payment under the 1906 Act.) If therefore compensation under the 1906 Act is redeemable the additional sum continues to be payable.

"The three specified purposes are '(*a*) the provisions relating to the recovery of weekly payments, (*b*) any order with respect to payment into Court of a weekly payment, (*c*) the provisions of Schedule I (19).' Head (*b*), I think, obviously refers to Schedule I (7) of the 1906 Act; and I am of opinion that head (*a*) refers to the following provisions of the Act, viz., section 1 (3), Schedule II (9) and (17). In other words, I think it can only refer to the recovery of weekly payments by the person who is entitled to receive them as compensation for injury sustained by him from the person who is liable to make them to him.

"It seems to me impossible to limit the identity of payments under the War Addition Acts with payments under the 1906 Act to the three enumerated heads.

"One may figure a case where subsequent to the 1917 War Addition Act an employer has redeemed a weekly payment under the 1906 Act as he may do by virtue of Schedule I (17). The payments under the War Addition Acts must continue. Must these payments be made until the Acts have expired irrespective of the workman's recovery? The employer's right of medical examination (Schedule I (14)), his right of review (Schedule I (16)), and his right with regard to payment to a workman who has ceased to reside in the United Kingdom (Schedule I (18)), are dependent on the workman being at the time entitled to receive weekly payments under the 1906 Act. But that has *ex hypothesi* ceased. Does the immunity of the workman's compensation from his solicitor's claim for expenses, regulated by Schedule II (14), effeir only to compensation as measured in terms of the 1906 Act, leaving the additional sum payable under the War Addition Acts liable to a lien or deduction in respect of his account? Such considerations suggest grave doubts as to whether it is possible to confine the consolidation of payments under the War Addition Acts with those under the 1906 Act to the three enumerated classes. But I frankly admit that though argumentatively imposing they are not in the practical administration of the Workmen's Compensation Statutes of serious importance.

"What has convinced me that payments under the War Addition Acts must be held to be payments under the 1906 Act is the provisions of the principal Act with reference to indemnity for, contribution to, and security for payments of compensation by persons who are rendered primarily liable to the workman. It is with this in view that I said that head (*a*) of the enumerated heads of the 1917 War Addition Act referred only to the recovery of weekly payments by the person who is entitled to receive them as compensation for injury sustained by him from the person who is liable to make them to him.

"A right of indemnity is given to the person who is liable to pay compensation by section 4 (2) and section 6 (2) of the stutute. A right of contribution is similarly given by section 8 (1) (*c*), proviso (*iii*); and a right in regard to security for payment in certain cases is given by section 11. In the cases of indemnity and contribution the person who by the 1906 Statute is made liable for payment of compensation to the injured workman is provided with a measure of relief against the person on whom the burden of compensation properly rests; and the measure of relief depends on the amount of compensation for which he is rendered primarily liable under the 1906 Act. The security under section 11 must be for the compensation payable under that Act.

"The claimants maintain that payments made under the War Addition Acts are not payments under the 1906 Act except in so far as they fall under the three classes enumerated in the Statute of 1917. If I concur in this, I must hold that persons who are made artificially liable for payment of compensation under the 1906 Act have imposed upon them by the War Addition Acts burdens for which they are in no way morally responsible, and from which they have no relief against those who are so responsible. The liability under the War Addition Acts would be on them alone. They would have relief so far as the burden was placed on them by the 1906 Act, but the War Addition Acts would have imposed a burden from which those who are properly responsible would be free. For this reason

I do not think the concurrence of the payments under the War Addition Acts and the 1906 Act can be regarded as identical in character for the purposes stated in the 1917 Act and for no other. It seems to me that the manifold circumstances and conditions surveyed in the 1906 Act render it essential to bring the 'additional sum' provided by the War Addition Acts into consonance with the compensation of the 1906 Act, and that the additional payments while made by virtue of the provisions of the War Addition Acts are also made under the 1906 Act."

The case was heard before the First Division on 31st October and 1st November 1922.

Argued for the appellants—The Workmen's Compensation (War Addition) Acts 1917 and 1919 were not passed as amending Acts; they merely superimposed an additional weekly payment to the workman as a temporary war measure. The payments made under these War Addition Acts were not payments under the 1906 Act, except in so far as they fell under the three classes enumerated in the Statute of 1917. The two Acts were only identified for those limited purposes, and therefore the weekly payments by way of war additions were not deductible. The 1917 Act provided no warrant to the arbiter for adding these weekly payments to the deductions which fell to made from the lump sum to which the appellants became entitled. Counsel referred to *Kirby* v. *Howley Park Coal and Cannel Company, Limited*, (1920) 124 L.T. 43; *Murray* v. *Glasgow Iron and Steel Company, Limited*, (1921) 37 S.L.Rev. 190.

Argued for the respondents—The arbitrator's interpretation of the Acts was a reasonable one, and was in fact the only one which would under the 1917 Act be workable. The 1917 Act in substance only amended the 1906 Act by increasing the amount of compensation awarded by one-quarter, and accordingly these weekly war addition payments fell to be considered in connection with compensation awarded under the 1906 Act. The Legislature had refrained from increasing the lump sum of £300. The question ought to be answered in the affirmative.

LORD PRESIDENT—The workman in this case was totally incapacitated as the result of his accident. The employers admitted liability under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), and the workman duly received weekly payments from them appropriate in amount to a case of total incapacity. He also received from them the proportional additions to those payments which are provided by the Workmen's Compensation (War Addition) Acts 1917 and 1919 (7 and 8 Geo. V, cap. 42, and 9 and 10 Geo. V, cap. 83). That state of matters continued for some ten months until the workman died. His death was due, just as the total incapacity was, to the injuries he had suffered in the accident. By paragraph (1) (*a*) (*i*) of the First Schedule to the Act of 1906 the amount payable to the representatives of the deceased workman in such circumstances is subject to the deduction of "any weekly payments made under this Act"—that is, of the weekly payments made to the workman during the period which elapsed from the commencement of his total incapacity until his death. The question is whether the deduction to be made from the total compensation payable to the representatives should include, not merely the weekly payments under the Act of 1906, but also the proportional additions to them under the Acts of 1917 and 1919. It appears from the note of the learned arbitrator that this question has led to conflicting decisions in various jurisdictions of the Sheriff Court.

It is to be observed in the first instance that the War Addition Acts do not bear to be and are not amendments of the Workmen's Compensation Act 1906. Nor are they directed to be read as one with that Act. They are distinct and substantive enactments by themselves. Their subject-matter is no doubt closely related with the subject-matter of the Act of 1906, but it follows from what I have said that these proportional increases are not themselves part of the compensation provided by the Act of 1906, although they are statutory sequels of that compensation. Their true character seems to be just that of bonus additions to a compensation, the incidence and rate of which is determined by the Act of 1906.

In the second place, the Act of 1917 provides expressly that for three defined purposes these proportional additions shall be deemed to be part of the weekly payments under the Act of 1906. The natural inference is that the proportional additions neither are, nor are to be deemed to be, weekly payments for any of the purposes of the Act of 1906 except the three which are defined in the Act of 1917. The deduction prescribed by paragraph (1) (*a*) (*i*) of the First Schedule to the Act of 1906 is not one of these three.

On a review of the detailed machinery of the Act of 1906, the learned arbitrator has come to the conclusion that the intention of the Legislature must have been to make these proportional additions weekly payments within the meaning of the Act of 1906 for a wider range of purposes than that which the Act of 1917 defines. That is perhaps possible, but it makes the limitation in the Act of 1917 meaningless. Moreover, the method of reasoning adopted by the learned arbitrator seems to be of doubtful legitimacy. If the Act of 1917 had been an amending Act, or one which was directed to be read as one with the Act of 1906, it might have been quite proper to prefer that construction of the Act of 1917 which would best harmonise its provisions with the detailed machinery of the Act of 1906. But then, as I have pointed out, that is not the position of the Act of 1917; and there would therefore be nothing to cause surprise if its provisions turned out to be but imperfectly adapted to all the machinery of the Act of 1906. What would cause surprise would be if the Act of 1917 contained anything inconsistent with or subversive of the general object and plan of the Act of 1906; and it is, I think, both legitimate and

safe in construing the former Act to have regard to the general object and plan of the latter. Now I find nothing in the Act of 1917 which is inconsistent with the scheme of the Act of 1906, and the construction of the Act of 1917 which is contended for by the appellants appears to me to be that which best preserves the consistency of its provisions with the scheme of the Act of 1906. For the principle underlying the measure of the compensation provided by the latter Act is that it is to be based alike in the case of weekly payments to an incapacitated workman and in the case of compensation to the dependants whom he leaves behind on the wage-earning capacity of the workman, and it would be inconsistent with that principle to require deduction of bonus additions made under the Act of 1917 from the gross sum which, according to the scheme of the 1906 Act, is arrived at without regard to them.

I see no reason for giving to the Act of 1917 any other than its natural meaning, namely, that these bonus additions are to be regarded as weekly payments only for the three purposes of the Act of 1906 therein defined, of which this is not one. I do not wish to say anything about the cases in which the learned arbitrator thinks difficulty may arise in working out the machinery of the Act of 1906, except that I am not convinced that any of the provisions to which the learned arbitrator has referred will present in relation to the treatment of war additions under the Acts of 1917 and 1919 any insuperable problem of construction.

I am therefore for answering the question put to us in the negative.

LORD SKERRINGTON — The Workmen's Compensation Act 1906 confers upon the dependants of a deceased workman the right to receive a certain defined amount of compensation. The respondents maintain, and the arbitrator has held, that this right has been abridged by the Act of 1917, and that in consequence the appellants must accept a smaller sum of compensation than the Act of 1906 would entitle them to demand. It was not suggested that the Act of 1917 expressly repealed the earlier Act, but it was said that by necessary implication the rights of the dependants had been altered for the worse. Unfortunately for this argument the Act of 1917 does not profess to deal one way or the other with the rights of the dependants of a deceased workman. It simply gives to a workman during his total incapacity the right to receive a weekly payment in addition to the weekly payment which he is entitled to receive under the Act of 1906. As the Act of 1917 does not confer any advantage upon the dependants of a deceased workman, one would be slow to hold that it impliedly placed them in a position of disadvantage as compared with that in which they stood under the Act of 1906. Any doubt, however, which might otherwise have existed is, in my judgment, removed by section 1 (2) of the Act of 1917, which enacts that the additional payments payable under that Act shall be deemed to be part of the weekly payments under the Act of 1906 for three specified purposes. Upon the principle *expressio unius exclusio alterius* the additional weekly payments under the Act of 1917 ought not to be regarded as part of the weekly payments under the Act of 1906 for the purposes of the present controversy. The question of law should therefore be answered in the negative.

LORD CULLEN—I am of the same opinion. Under the Act of 1906 the lump sum payable to the workman's dependants is, like weekly payments to him under that Act, calculated on the amount of his earnings. Between the accident and his supervening death resulting from it a workman may have received such weekly payments. Accordingly it is provided in regard to such a case that from the gross lump sum payable in respect of death there shall be deducted the amount of any weekly payments made to him in the interim. The reason for this seems obvious ; it is to avoid double payment. If in the interim additional payments have been made to the workman under the Acts of 1917 and 1919, these do not form a factor in the calculation of the gross lump sum payable in respect of his death. The gross lump sum is calculated without reference to them, and solely on the scale provided by the 1906 Act. Accordingly there is no cause to deduct them for the purpose of avoiding double payment. The provision of such additional payments is treated as a separate benefit given to the workman while alive, motived by the current fall in the value of money. As the duration of this depreciation could not be foretold, it was not presumably considered equitable that the lump sum permanently accruing to the dependants in the event of death should be increased by a factor possibly short lived and in any event not susceptible of calculation. This point of view seems to be reflected in the provision for redemption while the workman is alive contained in section 1 (2) of the 1917 Act. The calculation of the redemption money which goes to the workman permanently is not to take in the additional payments, but proceeds on the basis of the 1906 Act. The additional payments being possibly short lived, and in any event not susceptible of calculation in point of duration, are left aside to stand as a separate benefit to the workman during the uncertain time that the liability therefor may be left to continue.

Notwithstanding these considerations the result might have been otherwise if the Acts of 1917 and 1919 had enacted that the additional payments should for all purposes be deemed to be part of the payments under the Act of 1906. But the Acts of 1917 and 1919, which are not amending Acts or directed to be read along with the Act of 1906, but stand as independent enactments, do not so provide. On the contrary, the provision they make (1917 Act, sec. I (2)) is that the additional payments are to be deemed part of the payments under the 1906 Act for three specified purposes, none

of which is germane to the present question. *Expressio unius est exclusio alterius*, and I am unable to regard the special provision for the case of redemption in section 1 (2) of the 1917 Act as impliedly effecting a general unification of the two kinds of payments which would make unnecessary and stultify the preceding provision as to unification for three specified purposes.

The arbitrator points out an incongruity which he says would arise on the appellants' view in regard to cases of indemnification, contribution, and security, and by which his judgment has been materially influenced. We can hardly decide in this case whether such incongruity would arise, as the question is not here raised between parties having an interest in it. It may perhaps be that the arbitrator is well founded in the view of the matter which he says would need to be taken. But *esto* he is, and that there would be a want of logical consistency in the legislation in respect to that matter, I do not think this serves to displace the force of the considerations in favour of the present appellants' contention to which I have adverted. It seems to me that there would be an equal incongruity in deducting from the gross lump sum of £300 the antecedent additional payments to the workman which do not form a factor in its estimation. Such deduction is not required for the purpose of avoiding double payment, and I am unable to discover any other purpose within the presumable intendment of the legislation which it would serve.

LORD MACKENZIE had resigned, and LORD SANDS had not taken his seat in the Division.

The Court answered the question of law in the negative.

Counsel for Appellants — Wark, K.C. — Walker. Agents — Alex. M'Beth & Company, S.S.C.

Counsel for Respondents — MacRobert, K.C.—Wallace. Agents—Wallace & Begg, W.S.

HOUSE OF LORDS.

Thursday, November 2.

(Before the Lord Chancellor, Viscount Haldane, Viscount Finlay, Lord Dunedin, and Lord Shaw.)

YOUNG AND OTHERS *v.* BURGH OF DARVEL.

(See the case of *Latham* v. *Glasgow Corporation*, May 25, 1921 S.C. 694, reported *sub. nom. Macfarlane* v. *Glasgow Corporation*, 58 S.L.R. 504.)

Election Law—Poll—Combination of Polls —Legality—Poll under Temperance Act Combined with Poll for Municipal Election—Ballot Act 1872 (35 *and* 36 *Vict, cap.* 33), *First Schedule — Temperance (Scotland) Act* 1913 (3 *and* 4 *Geo. V, cap.* 33), *sec.* 5 (3).

A poll under the Temperance (Scotland) Act 1913 and a municipal election took place on the same day, in the same place, before the same presiding officers, and by means of the same ballot boxes, distinctively coloured ballot papers being issued to the electors who came to the polling stations. In an action for reduction of the poll in connection with the Temperance Act, on the ground, *inter alia*, that it was illegal to hold the two polls together, *held* (*aff.* the judgment of the First Division) that the course adopted of taking the polls together was not in itself illegal.

At the conclusion of the argument on behalf of the appellants, counsel for the respondents being present but not being called upon, their Lordships delivered judgment as follows:—

LORD CHANCELLOR — This appeal has been fully and ably argued on behalf of the appellants, but I think that your Lordships do not desire to hear an argument on the other side.

It is an appeal from the First Division of the Court of Session affirming the decision of the Lord Ordinary (Lord Ashmore), and the case is of this character:—Under the Temperance (Scotland) Act 1913, which came into effect in the year 1920, there is provision for taking a poll of the electors on three alternative questions, which may be shortly described as "no licence," the "limiting of licences," or "no change." In this particular case the proper steps were taken by requisition for ensuring a poll of that character in the burgh of Darvel. It was the duty of the respondents, who are the Provost, Magistrates, and Councillors of the Burgh of Darvel, to fix a day for the poll and to make the other arrangements, and the respondents, doubtless with a view to economy, fixed the poll for the 2nd November 1920, being the proper day for the municipal election; and they went further, for they caused the licensing poll to be held simultaneously with the municipal election for the burgh. The same polling stations were used for both purposes, the same presiding officers and clerks acted for the purposes of both polls, and while separate ballot papers for the two purposes were given to the electors who came into the polling place, these ballot papers were directed to be put into the same ballot box, and were only separated and counted when the polling was at an end. The result of the poll was in favour of a "no licence" resolution. The appellants, who were licence-holders and also electors, took no steps to question the poll until the month of April in the following year, the result of that delay, however caused, being that by that time the ballot papers had been destroyed in accordance with the statute and could not be referred to. In that month, April 1921, this action was commenced, in which the appellants claimed that the licensing poll ought to be reduced and the pursuers restored *in integrum*. The action was heard and dismissed by the Lord Ordinary, and his decision was affirmed by the First Division.