by the dredger. The registrar allowed them something on this head to which they were not entitled. He also deprived them of something to which they were entitled, when he gave only the daily supplies requisite in dock instead of the daily supplies requisite when the dredger was working. There is a confusion in the registrar's award in these respects, and also in regard to general damage in the circumstances of this particular case, but the original confusion was in the claim as stated by the plaintiffs. I certainly am not disposed to disturb the findings of three tribunals on such a point, when the difference between what was found and what in rigorous logic ought to have been found is trifling. And so with the complaint that the percentage allowed for depreciation was taken not on the original but on the reduced value of the dredger. I cannot say that in point of law the depreciation must be taken on the original value, nor am I prepared to exact mathematical precision in matters such as this. In my opinion, though there is error in the registrar's report there is no case for the interposition of this House. We cannot correct every minute mistake. And if we think, as I think, that after correcting the errors on both sides the registrar might quite well arrive at substantially the same figure as he has already found, we ought to dismiss the appeal.

LORDS ASHBOURNE, MACNAGHTEN, ROBERTSON, and ATKINSON concurred.

Appeal dismissed.

Counsel for the Appellants—Sir R. Finlay, K.C.—Butler Aspinall, K.C.—Leslie Scott. Agents—Rawle & Company, Solicitors.

Counsel for the Respondents—Pickford, K.C.—Greer. Agents—Thomas Cooper & Company, Solicitors.

HOUSE OF LORDS.

Tuesday, June 18.

(Before the Earl of Halsbury, Lords James of Hereford, Robertson, and Atkinson.)

NICOLSON *v.* PIPER.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37)—*Payment during Incapacity under Agreement—Cessation of Incapacity—Termination of Payment on Application for Review—Incapacity again Supervenes—Application for Review under Schedule* 1 (12)—*Competency.*

By an agreement duly recorded under the Workmen's Compensation Act 1897, between an injured workman (appellant), and his employer (respondent), the latter agreed to pay the former a certain sum weekly as compensation during incapacity, or until the weekly payment should be ended, diminished, increased, or redeemed under the Act. Subsequently, in an arbitration at the instance of the employer for the review and termination of the weekly payments, on the ground that the injured man's incapacity had ceased, the County Court Judge pronounced an order that the agreement "be this day terminated, and that the weekly payments to the workman thereunder be ended accordingly." At a later period the injured man again became incapable, and in his turn demanded an arbitration for the review and increase of the weekly payment under Schedule 1, section 12.

Held (*affirming* a judgment of the Court of Appeal) that the application was incompetent, there being no longer any weekly payment in existence capable of being reviewed, the whole matter having been finally terminated by the Judge's order.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., COZENS-HARDY and FARWELL, L.JJ.), affirming an order of the Judge of the County Court of Kent made in an application under the Workmen's Compensation Act 1897.

The facts are stated in the rubric.

At the conclusion of the arguments their Lordships gave judgment as follows:—

EARL OF HALSBURY—Speaking for myself in this case, I am of opinion that the judgment of the Court of Appeal is right and ought to be affirmed. The language of the judgment of the learned County Court Judge is, I think, not so ambiguous as has been suggested. It appears to me that I must follow the ordinary natural use of the words. He has decided that the payments are to be ended. The natural meaning of the words is plain. I really think that it is not capable of being expressed more clearly than in the language of the judgment itself. Upon the question of keeping alive the power of going back to the County Court Judge in the event of new circumstances arising which may render such a thing appropriate, I do not think it desirable to pronounce any definite opinion here. It is enough for me to say that the order of the County Court Judge is, to my mind, absolutely intelligible, and if I had any doubt about it I think that what the County Court Judge intended is very clearly shown by the fact which has been called to your Lordships' attention by both the learned counsel—namely, that a practice has existed now for some years of making a nominal payment in order to keep the question alive. I do not say that there is any legal effect in that practice. I mention it because, when I am considering the language of the County Court Judge, I cannot entertain any doubt that if he had intended to prolong the period during which the application might be made he would have had recourse to that practice. But he does not. He uses the language of the statute that the payment is to be "ended." Now, it has been suggested that there would have been some difficulty in

appealing against that order of the County Court Judge in this language, because at the time that the application was made, as the learned counsel for the workman admits, there was no incapacity. But to my mind that is not a sufficient answer, because although it may well be that the incapacity had ended for the time, yet if there was a known practice of keeping the claim alive by some form or another (whether that form is effectual or not, as I have said, I do not pause to discuss), but if there was a known form of keeping it alive and the judge made an order which precluded the possibility of any future application, it would have been quite competent to the workman or his advisers to appeal against that form of order upon the very ground that has been argued here, that there is a right to have some compensation at whatever period the incapacity may occur. The answer made by Collins, M.R. is, to my mind, perfectly conclusive. If the order is, as it is to my mind, clear and intelligible, and does preclude any future applications by reason of the recurrence of the incapacity, the form of the order was a subject-matter of appeal and the workman could have appealed. But he has not appealed. The result is that you now have an order which the learned Judge was capable of making, which, duly construed, puts an end to the right of the workman to apply again. That order was not appealed against, and therefore it is impossible for your Lordships to decide otherwise than as the Court of Appeal has decided, that this is an order properly made within the learned Judge's capacity, and not appealed against, and therefore it must be obeyed. The form of the order is such that it is hardly possible to deny—indeed it has been very faintly denied by the learned counsel—that it does put an end to the power of the workman of applying again. I wish to leave entirely untouched the question whether the practice of making a nominal payment per week is one which can have any legal effect or not. That question is not raised at present, and I do not desire to decide more than is actually before your Lordships' House. At all events the result, to my mind, is that the order of the Court of Appeal appealed against is right and ought to be affirmed, and therefore I move your Lordships to dismiss this appeal with costs.

LORD JAMES OF HEREFORD—I concur in the opinion expressed by my noble and learned friend with some hesitation and certainly with regret. I agree with him that the County Court Judge intended that this order should be a final settlement. We were unable to obtain information at the Bar as to whether any application was made to the judge to make a formal suspensory order for 1s. or 1d. But take it either way, either that the County Court Judge refused to make such a usual order, or that the application was not made at all, in either case the County Court Judge must have intended his order to be final. I hesitate to concur in my noble and learned friend's view as to whether there could have been an appeal from that order. I am not sure that it is quite correct. In one sense there could have been an appeal from the order, but if so the appeal would be one that would be open to every applicant in such a case. Therefore I think that the only argument that could have been addressed to the Court of Appeal would have been that every order in such a case ought to be a suspensory order, because there were no incidents in this case to give this applicant any particular right to have that order made any more than any other suitor under similar circumstances. That being so, I think that the real question here, upon which there may be differences of opinion, is as to the power of review. I am not disposed to differ entirely from my noble and learned friend's view on that point, but I should like to reserve my opinion upon it by saying that I am not entirely convinced that there is no such power of review. The instances that were put in argument—of perjured witnesses, or an absolute mistake having occurred, where the learned Judge has been misled—give rise to the question whether there could be an application in the shape of what may be termed a new trial; but in this case I do not understand that there would be any other incident shown except the revival of this illness or incapacity from causes which could not then have been foreseen. Therefore it is that I feel a doubt as to whether there ought not to be a power of review given as to incapacity in the same way as there has been a power of review given in the case of nearly all judicial decisions. I do not think that I am entitled to differ from the view that has been expressed, and I therefore with some hesitation concur in the motion that has been made.

LORD ROBERTSON — I think that the judgment is right. This application is made under section 12 of the first schedule to the Act. That section provides, and provides only, for the revision of a weekly payment, and it postulates as the thing to be operated upon by the Court an existing weekly payment, susceptible of being "ended, increased, or diminished." Now, here there is no such weekly payment extant, and on this short ground the application was untenable. I am satisfied that in the present instance the County Court Judge who ordered the payment to "end" intended a final termination. I reserve my opinion as to the appropriate course to be taken under this Act by any judge who thinks that possibly there may still be a latent evil which may in the sequel produce incapacity. Accordingly I entirely reserve my opinion as to the propriety or legality of giving a payment at some nominal rate during the period in which *ex hypothesi* there is no extant incapacity.

LORD ATKINSON concurred.

Appeal dismissed.

Counsel for the Appellant—Shearman, K.C.—E. Browne. Agents—Pattinson & Brewer, Solicitors.

Counsel for the Respondent—Horridge, K.C. — Shakespeare. Agents — William Hurd & Son, Solicitors.

HOUSE OF LORDS.

Wednesday, June 19, 1907.

(Before the Earl of Halsbury, Lords James of Hereford, Robertson, and Atkinson.)

YSTRADYFODWG AND PONTYPRIDD MAIN SEWERAGE BOARD *v.* BENSTED.

(On Appeal from the Court of Appeal in England.)

Revenue—Income-Tax—Sewer—"Hereditament"—"Capable of Actual Occupation"—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 60, *Schedule A, Rules Nos.* 1 *and* 3.

Held (*affirming* the judgment of the Court of Appeal) that a sewer vested in and under control of a local authority is for the purpose of income-tax a hereditament capable of actual occupation, and is chargeable in respect of the annual value thereof according to Schedule A, Rule No. 1, of the Income-Tax Act 1842.

This was an appeal from a judgment of the Court of Appeal (Collins, M.R., Cozens-Hardy and Farwell, L.JJ.), who had affirmed a judgment of Walton, J., in favour of the Crown, upon a case stated by the Commissioners for the General Purposes of the Income-tax.

Earl of Halsbury—In this case I think that the judgment of the Court of Appeal ought to be affirmed. It appears to me that there is a mixture, not to say a confusion, of thought in using the word "profits" in a sense which is not consistent with the mode in which it is used in the statutes relating to income-tax. It may be—I do not propose to controvert the idea—that in an ordinary sense there might be some difficulty in saying what are "profits"; but really it seems to me that every part of the argument here has been covered by authority. In the first place, it is clear that there is an occupation, and, in the next place, it is clear that there is a beneficial occupation. The alternative suggested—namely, that this is one of those excepted undertakings (the only colour for which is that the word "drain" is used in the excepting section)—is to my mind untenable. The word "drain" used by itself might perhaps bear the meaning which it is suggested by the appellants that it ought to bear, but when you look at the mode in which the word "drain" is introduced, and the other words with which it is associated, its meaning depends upon a very familiar canon of construction—that when you have a word which may have a general meaning wider than that which was intended by the Legislature, when you find it associated with other words which show the category within which it is to come, it is cut down and overridden by the general proposition familiarly described as the *ejusdem generis* principle; and accordingly the word "drain" used in that section is not included in the excepted businesses which are therein described, so as to make the word "drain" applicable to the present question. Then if it is not the rest seems to me to be perfectly clear, because you have here a beneficial occupation, and by the rules applicable to Schedule A you have to take a hypothetical tenant, and the rent which the hypothetical tenant would give if he were called upon to get rid of this sewage, as ascertained by the mode by which it is to be calculated, and by the machinery by which the Legislature has supposed that this somewhat difficult problem is to be solved. I really do not feel it necessary to do more than say that I concur with the judgments which have been delivered on this subject by every judicial person before whom it has come. I entirely concur with them, and I cannot forbear from pointing out that the Attorney-General in the course of exactly seven minutes appeared to me to dispose of the whole day's argument with which we had been entertained. I must say that I congratulate him, and I am endeavouring to emulate his success by the length of the judgment which I am now delivering.

Lord James of Hereford concurred.

Lord Robertson—I agree that the judgment is right, and I think that the controverted subjects have been accurately and adequately discussed in the Court of Appeal.

Lord Atkinson concurred.

Appeal dismissed.

Counsel for the Appellants—Danckwerts, K.C.—S. T. Evans, K.C.—Redman. Agents—Wrentmore & Son, Solicitors.

Counsel for the Respondent—Attorney-General (Sir J. Lawson Walton, K.C.)—Sir R. Finlay, K.C. — W. Finlay. Agent — Sir F. C. Gore, Solicitor of Inland Revenue.

PRIVY COUNCIL.

Wednesday, July 3, 1907.

(Present—The Right Hon. Lords Robertson and Collins, Sir Arthur Wilson, and Sir Alfred Wills.)

FRIESE-GREENE'S PATENT.

Patent—Practice—Extension of Patent—Advertising—Patents, Designs, and Trade Marks Act 1883 (46 *and* 47 *Vict. c.* 57), *sec.* 25 (1).

Section 25 (1) of the Patents, Designs, and Trade Marks Act 1883 provides "A