asked the arbiter to state a case for the opinion of the Court. On 6th March 1919 the Sheriff-Substitute (WATSON) answered the question of law in the Case, and found the claimant entitled "to his expenses in this Court." The landlord appealed to the Second Division of the Court of Session, and on 4th June their Lordships dismissed the appeal with expenses.

On the motion for approval of the Auditor's report the appellant objected thereto in so far as there had been allowed certain items all in connection with the preparation and submission of the Special Case to the Sheriff-Substitute. The items allowed were ten in number and amounted to £6, 1s. 6d. The principal item was as follows—"Travelling to Castle Douglas, when application by landlord heard by arbiter and granted, and arranging details of Special Case. Occupied, including travelling, 6 hours, £3."

Argued for the appellant—The expenses in question were not expenses of proceedings before the Sheriff, but were, strictly speaking, expenses incidental to the arbitration in the sense of the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), Second Schedule, section 14—*Scottish Union and National Insurance Company* v. *Surveyor of Taxes*, 1889, 16 R. 624, 26 S.L.R. 489; *M'Quater* v. *Ferguson*, 1911 S.C. 640, 48 S.L.R. 560. Appellant's note of objections should accordingly be sustained.

Argued for the respondent—The expenses in question were not expenses "of and incidental to the arbitration and award" in the sense of the Agricultural Holdings (Scotland) Act 1908, but were really expenses of and incidental to the Special Case, and as such fell within the words "expenses in this Court" in the Sheriff's interlocutor. The Court had inherent power to decide questions of expenses in such cases—*MacIntyre* v. *Board of Agriculture*, 1916 S.C. 983, 53 S.L.R. 316. In stated cases under the Workmen's Compensation Acts expenses in connection with the adjustment of the case had been allowed—*M'Govern* v. *Cooper & Company*, 1901, 4 F. 249, 39 S.L.R. 164; Maclaren on Expenses, p. 300; C.A.S. L. XIII, 17. On the appellant's argument the cost of framing a petition or drawing a summons would not be expenses in a case.

LORD JUSTICE-CLERK—The question in this case is, what is the meaning of the words in the Sheriff-Substitute's interlocutor of 6th March, "expenses in this Court," and whether the tenant's expenses in the Sheriff Court included expenses which were incurred in preparing and submitting the case to the Sheriff?

I think these expenses, if they come into the proceedings at all, are expenses which fall within section 14 of the Second Schedule of the Act of 1908, as being expenses "of and incidental to the arbitration and award" which are in the discretion of the arbiter. The Stated Case is put forward in terms of the statute, as can be done at any stage of the proceedings—in this case at the stage where the arbiter has gone so far as to issue proposed findings, when the parties raised a question of law which would affect materially the ultimate award to follow upon these proposed findings. Accordingly it seems to me that—to use the Sheriff-Substitute's language—"they are not expenses in this Court." What the arbiter may do with them I do not know. I think they do not fall within these words, and accordingly, in my opinion, the objection should be sustained.

LORD DUNDAS—I am of the same opinion and for the same reason.

LORD GUTHRIE—I concur.

The Court sustained the objections.

Counsel for the Appellant — Fenton. Agents—Cowan & Stewart, W.S.

Counsel for the Respondent — Scott. Agents—Carmichael & Miller, W.S.

HOUSE OF LORDS.

Tuesday, July 1.

(Before Viscount Finlay, Viscount Cave, Lord Dunedin, Lord Shaw, and Lord Wrenbury.)

M'ALINDEN *v.* JAMES NIMMO & COMPANY, LIMITED.

(In the Court of Session, February 23, 1918, 55 S.L.R. 276, and 1918 S.C. 329).

Master and Servant — Workmen's Compensation — Compensation — Increased Weekly Payment on Failure to Obtain Work when Partially Incapacitated.

It is open to an arbiter acting under the Workmen's Compensation Acts, upon sufficient evidence being adduced, to increase the compensation granted to a workman on partial incapacity, on the ground that though there is no change in his physical state, there is a greater difficulty than had been contemplated at the time of the original grant in his obtaining employment. *Circumstances* in which *held* that an arbiter had facts before him to entitle him to increase an original award.

Expenses—Poor—House of Lords Appeal.

The Scots Act 1424, cap. 24 (1424, cap. 45), dealing with pauper causes, enacts—". . . And gif sic cause be obtenyt the wrangar sall asseyth bath the party scathit and the aduocatis costis and truale. . . ."

Held that the practice of the House of Lords was established as to the question of expenses in a poor's cause, and could not be altered because of an early Scots statute which had not in contemplation an appeal to the House of Lords.

This case is reported *ante ut supra.*

VISCOUNT FINLAY—In my opinion the right view of this case was taken by the Lord Justice-Clerk, and I observe that Lord Dundas, although he agreed with the majority of the Court of Appeal, and agreed

in a sense contrary to the opinion of the Lord Justice-Clerk, said that he did so with very great hesitation. It appears to me that the amount may be reviewed if there has either been a change of circumstances or if further events have put a different complexion on the case. The practical question here is whether the arbiter came to the conclusion, and whether there was evidence on which he could come to that conclusion, that the difficulty of finding work owing to the accident was greater than had been supposed at the time of the first award. In my opinion the judgment of the majority of the Second Division of the Court of Session goes rather to a consideration of the propriety of the conclusion and of the weight of the evidence than to the point whether there was any evidence on which the arbiter might have come to that conclusion. It appears to me that the applications showed that there was a difficulty in getting work owing to this accident. Of course if there is a very great demand for labour, even comparatively inefficient labour, owing to the state of the market, a person injured may get employment, so that the state of the market may in that sense affect the demand for the labour, say, of a one-armed man. Then the fact that he is not employed in a different state of the labour market would be the result of the accident which partially disabled him.

Under these circumstances it appears to me that the Lord Justice-Clerk was right in holding that there was evidence on which the arbiter might come to the conclusion which I infer he came to, and that his award ought to stand.

But I do not like to part with the case without saying that I think it is a great pity that the finding of fact was not more explicit. I do not know how often it has been said in this House that in these cases the findings of fact and findings of law ought to be kept separate, that there ought to be an explicit statement of what the facts found are, and what the arbiter intended to come to as a conclusion on the point of fact, and to keep the fact and the law separate. A good deal of discussion here has been in the endeavour to find out what it was that the arbiter regarded as being the facts and what he intended to decide. I have arrived at the best conclusion I can upon the materials before the House, and I think he intended to decide that subsequent events had shown that the difficulty of getting employment owing to the accident was greater than he had thought at the time of the first award, and that we cannot say that there was no evidence on which in point of law he might come to that conclusion.

VISCOUNT CAVE—I am of the same opinion, and for the reasons given by the noble and learned Lord on the Woolsack. I am not sure whether upon the facts as stated by the learned arbitrator I should have arrived at the conclusion at which he arrived, but I am satisfied that there was evidence before him upon which he could base his conclusion, and therefore I agree with the opinion of the Lord Justice-Clerk and of the noble and learned Lord.

LORD DUNEDIN—I concur. I agree entirely with the conclusion of the Lord Justice-Clerk.

LORD SHAW—I am of the same opinion. I also agree with the opinion of the learned Lord Justice-Clerk.

In a case of this kind I rather deprecate the citation of authority, but on the other side there is so much analogy between the present case and the case of *Wilsons and Clyde Coal Company* v. *Macdonald*—a case from Scotland decided in the year 1912 (App. Cas. 513, 1912 S.C. (H.L.) 74, 49 S.L.R. 708)—that I will make so free as to cite from my own opinion the following sentences:—"The appellant maintains that the circumstances are now different from those which existed when he agreed to accept 16s. 11d. per week, because he has entered the open labour market, and notwithstanding all his efforts he is unable, on account of his injuries, to obtain any employment. He asks an opportunity of proving that his applications have been unsuccessful, and that his want of success 'has not been due to the state of the labour market but to his incapacity, and also to the very limited type of work which is now within his powers.'" Each case on fact differs from every other, but the circumstances of the present case are that a demand of a similar nature was made, and that that demand in the opinion of the learned arbiter was satisfied.

If by the expression "change of circumstances" were meant merely a change of circumstances in the condition of health or body owing to the accident, then there might be no such change whatsoever. But what is meant in language of that kind in cases like the present is that there has been more light thrown by the applicant upon the results of his injury, and upon the effects on the labour market which the having of such an injury causes to him. That is a plain change, and a plain result may follow, namely, that the man who pronounced the original judgment as arbiter may find that the award does not fit the case with the additional light now thrown upon it by experience.

I do not detain your Lordships with any further observations except to say that like your Lordship on the Woolsack I read into what is *ex facie* a finding of law a clear statement of fact to the following effect (I read it in terms)—"The difficulty of his finding employment is attributable to the nature of his personal injury."

I observe the language of Lord Salvesen and the language of Lord Guthrie upon that topic, in which they seem to desiderate an express finding of fact to that effect. I agree with these learned Lords that it might have been better to have it, but to deny that it is there in substance and in truth seems to me to be erroneous. I think that error occurs in the judgment in the Court below, and it is here now to be remedied.

LORD WRENBURY — I am of the same

opinion. It seems to me that an application to review under article 16, Schedule 1, of the Act of Parliament is admissible not only where the circumstances have changed but where the party who applies for review is prepared to adduce evidence to show that the unaltered state of circumstances is now better understood than it was at the time that the first Order was made. The question therefore which we have to resolve in this case I think comes to this—it is not easy to my mind—whether there has been such a finding of fact as that I am in a position to say that although the physical condition of the man remains the same, the arbiter was at the second arbitration in a better position to judge of the diminution of capacity which had been induced by the injury which the man had sustained. Now upon that, difficult as it is, I concur with the Lord Justice-Clerk in that I am not prepared to say that there was no evidence upon which the arbiter could find that the greater difficulty in the appellant finding work (which was greater than he contemplated when he fixed the 10s. 3d.) was due to the nature of his personal injury, and if there was such evidence and it was for the arbiter to determine what the result of it was, this appeal must succeed. I therefore think the appeal should be allowed.

Counsel for the appellant then raised the question of pauper costs, and contended that the Scottish Act of 1424, which still was in force, governed any Order of the House of Lords on the question.

Without calling on the respondents their Lordships gave judgment as follows :—

VISCOUNT FINLAY — In my opinion we cannot accede to this application. The practice in appeals to this House was settled in 1892, and ever since that time it has been adhered to, and adhered to in all Scotch cases. We are now asked to say that by virtue of a Statute of 1424, a Scottish statute of James 1st of Scotland, that practice is wrong. That statute in its terms does not apply to the House of Lords ; it is a statute applying to Scotland and to the Courts of Scotland, and the practice in Scotland is in conformity with the directions given for what the judge should do in cases where resort was had to the statute.

The matter is not altogether devoid of direct authority, because in the case of *Wyman* v. *Paterson* in the year 1900, reported in the Appeal Cases for that year, beginning at page 271 (2 F. 37, at p. 48, 37 S.L.R. 635), application was made where a fund had been recovered for an order that the fund which had been recovered and preserved by the action of the appellant should bear the costs of her solicitor, and the Lord Chancellor (Lord Halsbury) said, "This is a pauper case. We do not give costs in a pauper case."

Under these circumstances it appears to me that we must adhere to the practice which has been established for so many years and which has received the sanction of Lord Halsbury's opinion, not as a mere dictum, but as the reason for the conclusion at which he arrived on that application.

For these reasons it appears to me that we cannot do anything in the direction desired by Mr Macquisten on behalf of the appellant in the present case.

VISCOUNT CAVE—I agree. I only desire to add that this House has power under section 11 of the Appellate Jurisdiction Act 1876 to regulate its own procedure. Under that power a rule has been laid down, and I submit that it should be adhered to.

LORD DUNEDIN—I think the procedure of every Court is part of the *lex fori* of that Court. It is inconceivable that James 1st of Scotland should have legislated for the *forum* of the House of Lords as it is now constituted. It is quite within the power of the House of Lords to make a regulation which would arrive at the result which Mr Macquisten wants, but there is a good deal to be said upon both sides about the question whether a pauper should be allowed to get his expenses from the other side when he never can have to bear any expenses himself. It is a general question ; the House of Lords has settled it in one way ; and it is quite impossible, I think, for us to alter that practice.

LORD SHAW — I agree with the noble Viscount on my left (Viscount Cave).

LORD WRENBURY—I agree.

Their Lordships sustained the appeal with expenses, the expenses in the House of Lords to be taxed in the manner usual where the appellant sued *in formâ pauperis*.

Counsel for the Appellant — Scanlan —Macquisten. Agents — Thomas Scanlan & Company, Glasgow—R. D. C. M'Kechnie, Edinburgh—Herbert L. Deane, London.

Counsel for the Respondents—Sandeman, K.C.—W. Beveridge. Agents—W. T. Craig, Glasgow—W. B. Rankin & Nimmo, W.S., Edinburgh—Beveridge & Company, Westminster.

Monday, July 21.

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

INLAND REVENUE *v.* HAMILTON.

(In the Court of Session, December 12, 1917, 55 S.L.R. 163, and 1918 S.C. 135.)

Revenue—Succession Duty—Entail—Predecessor—Disposition—Devolution by Law —Succession Duty Act 1853 (16 *and* 17 *Vict. cap.* 51), *secs.* 2 *and* 10.

The Succession Duty Act 1853, section 2, enacts — "Every past or future disposition of property by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after an interval, either certainly or contingently, and either originally or by way of substitu-