reasonable application of the Lord Justice-Clerk's rule laid down in *Whitehead's* case, that the two claims must be capable of being tried and terminated contemporaneously or nearly contemporaneously.

On the question of *forum non conveniens* I think this is a typical case for giving effect to that plea.

The Court adhered.

Counsel for the Pursuers (Reclaimers)—Moncrieff, K.C.—D. P. Fleming. Agents—P. Gardiner Gillespie & Gillespie, S.S.C.

Counsel for the Defenders (Respondents)—Sandeman, K.C.—J. R. Christie. Agents Davidson & Syme, W.S.

Friday, July 5.

SECOND DIVISION.

[Sheriff Court at Hamilton.

FREELAND *v.* SUMMERLEE IRON COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (3)—*Arbitration—Competency—"Question" Arising in Proceedings under Act.*

The employers of an injured workman admitted liability, and tendered payment of the compensation due on condition of the workman signing a receipt, which stated, *inter alia*—"At the first or any subsequent payment liability is admitted only for the compensation to date of payment. Further liability, if any, will be determined week by week, when application for payment is made." The workman having refused to sign the receipt and applied for arbitration, *held* that there was a "question" in the sense of the Act, and that arbitration was competent.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), enacts—Section 1 (3)—"If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act . . . or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall . . . be settled by arbitration. . . ."

Charles Freeland, miner, Larkhall, *appellant*, being dissatisfied with a decision of the Sheriff-Substitute (SHENNAN) at Hamilton, acting as arbiter in an application by him for arbitration under the Workmen's Compensation Act 1906 against the Summerlee Iron Company, Limited, coalmasters, Larkhall, *respondents*, appealed by way of Stated Case.

The Case stated — "1. The accident occurred on 13th December 1911, and it arose out of and in the course of the appellant's employment with the respondents as a miner. The appellant has been totally incapacitated since said date. 2. The respondents are liable to pay the appellant compensation at the rate of 14s. 9d. per week in respect of total incapacity. 3. On 29th December 1911 the respondents admitted liability and tendered payment of the compensation then due. They requested the appellant to sign a receipt therefor, but the appellant objected to the terms of the receipt and refused to sign it. 4. The part of the receipt to which the appellant objected was contained in a note printed above the columns provided for a record of the dates and the amounts paid week by week. The part of the note objected to was the following—'At the first or any subsequent payment liability is admitted only for the compensation to date of payment. Further liability, if any, will be determined week by week, when application for payment is made.' Copy of the form of receipt is given in the appendix hereto.

"The appellant objected to the form of the receipt on the ground that he was entitled to have from the respondents a simple and unqualified admission of liability such as he could embody in a memorandum of agreement for the purpose of recording. He therefore invoked arbitration on the ground that a question had arisen as to the duration of the compensation.

"I was of opinion that no question had arisen between the parties which fell to be settled by arbitration, and accordingly on 14th February 1912 I dismissed the application."

The *questions of law* for the opinion of the Court were—"1. Do the foregoing facts disclose any question between the parties on which arbitration can competently be invoked? 2. Was the Sheriff-Substitute right in dismissing the appellant's application for arbitration?"

Argued for the appellant—There was here a "question" arising in proceedings under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58). The employer had only made a conditional tender of compensation, and by accepting it the workman was asked to discharge his statutory rights. Parties might be agreed as to the liability to pay and the amount of compensation, but they were at issue as to the duration—*John Brown & Company, Limited* v. *Hunter*, May 28, 1912, 49 S.L.R. 695. The contention of the respondents here was that they should hold an agreement terminable at pleasure, whereas the proper method of bringing compensation to an end was by an application for review—*Donaldson Brothers* v. *Cowan*, 1909 S.C. 1292, 46 S.L.R. 920. By the terms of the receipt the appellant would be obliged to submit himself to medical examination at any time instead of at the intervals provided by the statutory rules. The agreement must be an "echo" of the Act, otherwise it was not an agreement in the sense of the Act—*M'Ewan* v. *William Baird & Company, Limited*, 1910 S.C. 436, 47 S.L.R. 430.

Argued for the respondents—There was no finding that respondents had refused to pay compensation on other terms than the receipt. There was here no question as to the duration of the incapacity. There was therefore no dispute. It was not

sufficient to make an application for arbitration competent that a dispute might arise. The Court must be satisfied that it had arisen, and here there could be no dispute till the respondents stopped payment. If the method of respondents was not sustained, they might be put in the position of being bound to pay money when there was no incapacity and of finding such payments ultimately irrecoverable. The mere fact that there was a qualification in the receipt did not bar the memorandum going on the register for the purpose of being recorded — *M'Lean* v. *Allan Line Steamship Company, Limited*, 1912 S.C. 256, 49 S.L.R. 207. Even if there was no agreement that could be recorded, it did not follow that arbitration was competent — *Gourlay Brothers & Company (Dundee), Limited* v. *Sweeney*, June 26, 1906, 8 F. 965, 43 S.L.R. 690; *Field* v. *Longden & Sons*, [1902] 1 K.B. 47.

LORD JUSTICE-CLERK—The case stands in this position. The appellant met with an accident and has been totally incapacitated since its date, and the respondents are liable to pay him 14s. 9d. per week in respect of total incapacity. These are facts found about which there is no dispute. On 29th December the respondents admitted liability and tendered payment of the compensation then due. That is to say they admitted to the injured man that they were liable, and tendered the payment which was due up to that date. They requested the appellant to sign a receipt therefor, but the appellant objected to the terms of the receipt, and refused to sign it.

In these circumstances the question is—were the parties in agreement so that a memorandum of agreement could be registered? In my opinion they were not. The appellant therefore comes forward and says that as there is no agreement of which he can make use for the purpose of enforcing his claim he has the right to raise an arbitration in the ordinary way, a question having arisen as to the duration of the compensation. I can see no ground whatever for excluding him from that. He is perfectly entitled to proceed by arbitration, as I am satisfied that there has been no agreement made between the parties which he is entitled to register.

LORD SALVESEN—I am of the same opinion. A workman who is injured in the course of his employment is entitled by the Workmen's Compensation Act to present an application to an arbitrator to determine whether he is entitled to compensation under the Act, and the amount of that compensation. If the employers admit liability then we have held that he is not entitled to put them to the expense of such an application. But the admission must be an unqualified one, and not a qualified admission which would debar him from the right of going to the Sheriff Clerk with a memorandum of his agreement and getting it registered so as to be able to charge upon it.

It is said that he may record a qualified agreement if it has been come to. I do not doubt that he can, but a qualified agreement will not give him the rights that he possesses either under an unqualified agreement or under an award which he has obtained from the arbitrator. The respondents here made no secret of the fact that they desired by the qualification which they put into this receipt and which they wished the man to sign, to invert the position of the workman and put him *in petitorio* when he partially recovered from his accident, instead of their being in the position of having to pay him compensation until they presented an application to have his compensation diminished or ended.

It is obvious, therefore, that there is here a very substantial question, and one which is of interest to both employers and employed, but it is not a question that appears to me to be attended with any difficulty. One could conceive of difficulty arising if there had been payments made and accepted, but in the present case we were informed, without contradiction, that the employers refused to make any payments except upon the terms of the receipt, which qualified their obligation, putting them in the position of being able to terminate the compensation when they judged the workman to be partially or wholly recovered; whereas the Act gives the workman the right, after his position has been formulated either by an unconditional agreement or by an award, to have his compensation continuously paid until the employer presents his application for review.

I think here the employers were quite wrong. There was a question between the parties as to the duration of the compensation which had not been settled by agreement, and therefore the workman was entitled to proceed by way of arbitration, and is not excluded by the admission of the employer on two only of the three points on which there must be agreement if arbitration is to be excluded.

LORD GUTHRIE—I agree. It is common ground that in a sense there is a question between the parties, but the Sheriff-Substitute seems to have held that the only question that the workman raised was so frivolous that it could not be dealt with as a question in any real or substantial sense. It seems to me, agreeing with your Lordships, that the question raised between the parties is a very substantial question. It is perfectly natural that the employers should seek by such a receipt as we have before us to bring about a very favourable state of matters for them—namely, that they should be entitled whenever they think a workman has recovered to stop payment, putting it upon the workman then to take arbitration proceedings, which might be very lengthy before any decree was given. On the other hand, it is equally clear that the workman has a very substantial motive for getting an agreement which could not only be recorded

but on which he could charge, so that his compensation should run on until the employer had to take proceedings to end or alter it.

The result is, that if there was a substantial question then the parties are agreed that it cannot be held that there was an agreement; and, agreeing as I do with your Lordships that there was a substantial question, I think the only course open to the workman in the absence of agreement was to take proceedings for arbitration.

LORD DUNDAS was not present.

The Court answered the first question in the affirmative and the second question in the negative.

Counsel for the Appellant—Moncrieff, K.C.—Fenton. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Munro, K.C.—Carmont. Agents—W. & J. Burness, W.S.

VALUATION APPEAL COURT.

Wednesday, July 10.

(Before Lord Johnston, Lord Salvesen, Lord Cullen.)

ANSTRUTHER AND OTHERS (ANSTRUTHER'S TRUSTEES) *v.* INLAND REVENUE.

PATON *v.* INLAND REVENUE.

Valuation Cases—Mineral Rights Duty—Minerals—Excepted Substances—Felsite—Whinstone—Granite—Finance (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8), *sec.* 20 (1) *and* (5).

The Finance (1909-10) Act 1910, section 20 (1), imposes a duty "on the rental value of all rights to work minerals and of all mineral wayleaves," and enacts by sub-sec. 5—"Mineral rights duty shall not be charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel." Section 22, which deals with special provisions as to increment value duty and reversion duty in the case of minerals worked or leased, enacts, sub-sec. 8—"Nothing in this section shall apply to minerals which are exempt from mineral rights duty under this Act." Section 24, the interpretation clause, does not define "minerals," but contains the following clause:—"Where any minerals are at any time being worked by means of any colliery, mine, quarry, or open working, all the minerals which belong to the same proprietor, if minerals are being worked by the proprietor, or which the lessee has power to work if the minerals are being worked by a lessee, and which would in the ordinary course of events be worked by the same colliery, mine, quarry, or open working, shall be deemed to be minerals which are being worked at that date."

Held that felsite, whinstone, and granite were subject to mineral rights duty.

Anstruther's Case.

At a reference held before David Rankine, C.E., a referee appointed under the Finance (1909-10) Act 1910, Sir Ralph Anstruther of Balcaskie, Bart., and others, trustees of the late Sir Windham R. Carmichael Anstruther of Anstruther and Carmichael, Bart., appealed against the following assessment by the Commissioners of Inland Revenue:—

Mineral Rights and Wayleaves Chargeable. 1.	Rental Value Assessed by the Commissioners. 2.	Mineral Rights Duty at One Shilling in the pound on the Rental Value. 3.
	£	£ s. d.
Stone: Cairngryffe	753	37 13 0

The grounds of appeal were stated as follows—"That the stone taken from the quarry is a 'felsite' stone, one of the 'porphyrite' seams, and that it is not a mineral. It is explained that the stone is let to the County Council for the purpose of mending the roads, and it is contended that the product is embraced in the term 'gravel.' The stone cannot be used for building purposes."

The referee decided that "the stone or rock called a 'felsite' stone," taken from Cairngryffe Quarry, is, in terms of the Finance (1909-10) Act 1910, a mineral.

The appellants thereupon craved a case for appeal.

The referee stated the case by way of note to his decision as follows:—

"*Note*—The Land Values (Referee) (Scotland) Rules, 1911, dated 24th April 1911, do not instruct referees to append to their decisions an explanatory note, but, as I was informed this is a test case I have thought it proper to do so.

"At a meeting for consultation as to procedure it was arranged that I should visit the subjects, and that otherwise the proceedings should be confined to the hearing of counsel for parties.

"I have made two visits to the subjects, the first being prior to the hearing of counsel, and the second after having heard them.

"The stone or rock as to which the appeal has been taken is leased by Sir Windham Robert Carmichael Anstruther, of Anstruther and Carmichael, Baronet, to the Upper Ward District Committee of the County Council of the County of Lanark. The subjects are described in the lease as all and whole the whinstone quarry situated on the estate of Carmichael, in the parish of Pettinain and County of Lanark, near the top of the hill called Cairngryffe, and known as the Cairngryffe Quarry, together with the land necessary to form a double line of rails or hutch road from the aforesaid quarry to the loading bank to be formed on the west side of the