

agreement would be equivalent to a decree for a weekly payment of fourteen shillings—*Hamilton v. Hamilton*, March 20, 1877, 4 R. 688; *Cunningham v. Black*, January 9, 1883, 10 R. 441; *Purves v. Brock*, July 9, 1867, 5 Macph. 1003. The appeal was consequently competent. The procedure in the Sheriff Court was incompetent. The alleged agreement was an agreement at common law, and not under the Workmen's Compensation Act. The provisions of that Act as to recording a memorandum of agreement referred only to agreements come to in the course of proceedings under the Act, which was not the case here. The proof allowed by the Sheriff-Substitute might be appropriate if the question were one as to the genuineness of a written agreement, but what the pursuer was seeking to do was to prove that there was an agreement by spelling one out of the actings and communings of parties. As appeared from the previous cases about the same matter *ut supra*, it was essential that the alleged agreement should have been in writing.—See *per* Lord Adam, 3 F. 27.

At advising—

LORD ADAM—In September 1898 when in the employment of the respondents the petitioner met with an accident.

He alleges that an agreement was entered into between him and the respondents, whereby the amount of compensation due to him under the Workmen's Compensation Act was ascertained.

Thereafter he sent a memorandum embodying the alleged agreement to the sheriff clerk to be recorded in the Sheriff Court books.

On receiving this memorandum the sheriff clerk (it not having been signed by all the parties interested), as directed by section 7 (a) of the Act of Sederunt, intimated to the respondents the fact of such a memorandum having been sent to him for registration. He received a reply to the effect that the respondents disputed the genuineness of the agreement.

That made it necessary for the petitioner to apply to the Sheriff for a special warrant of registration, which he accordingly did by presenting the present petition. A record was made up in the action, and the Sheriff-Substitute on 5th April 1901 pronounced an interlocutor by which he allowed the parties a proof *habili modo* of their averments *quoad* the alleged agreement between them. This is the interlocutor which is now appealed against.

The objection to the interlocutor maintained to us was, shortly, this, that an agreement as to compensation under the Workmen's Compensation Act required to be in writing, and that as the agreement in this case was not alleged to be in writing, a proof of it was incompetent.

I see nothing in the Act which requires that an agreement under the Act must be reduced into writing, and I suppose signed by the parties.

All that the Act requires—section 8 of the second schedule—is that where the amount of compensation shall have been

ascertained either by a committee or by an arbiter, or by agreement, a memorandum thereof shall be sent by the committee or arbiter, or any party interested, to the sheriff-clerk for registration. If the agreement itself had been required to be sent the case would have been different, because, of course, a verbal agreement could not be sent. But there is no difficulty in sending a memorandum of the terms of a verbal agreement.

The petitioner is certainly a party interested, and has a right to send a memorandum of the alleged agreement for registration. On the other hand, the respondents have a perfect right to dispute its genuineness—that is, as I understand, either that there was no agreement at all, or if there was, that the memorandum does not truly set forth its terms.

That appears to me to be the only relevant question raised on this record.

What the Sheriff has done is to allow a proof of the alleged agreement, and I think he is quite right. But while I do not think that the Act requires that an agreement should be reduced into writing and signed by the parties, the proceedings in this case and in the previous case before us about the same matter, which will be in your Lordships' recollection, certainly show the expediency of that course being followed.

I am therefore of opinion that the appeal should be dismissed and the case remitted to the Sheriff, upon whom the duty lies of granting warrant to record the memorandum if he shall be satisfied of its genuineness.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD M'LAREN was absent at advising.

The Court dismissed the appeal and affirmed the interlocutor of the Sheriff Substitute dated 5th April 1901.

Counsel for the Pursuer and Respondent—Sandeman. Agent—William B. Rainnie. S.S.C.

Counsel for the Defenders and Appellants—Watt, K. C.—W. Thomson. Agents—Macpherson & Mackay, S.S.C.

Friday, July 12.

SECOND DIVISION.

[Sheriff of Lanarkshire.

BURNS *v.* COLVILLE.

Agent and Client—Remuneration—Promotion of Railway Bill—Attendance by Local Agent at Parliamentary Committee—Proof of Employment.

Circumstances in which held that a solicitor who was employed by the promoters of a railway bill, as their local agent, was entitled to remuneration for his attendance and services in London in connection with the proceedings

before the Select Committee of the House of Commons, although he had not received special instructions to go to London from the principal agents or the promoters.

James Burns, solicitor, Motherwell, brought an action in the Sheriff Court at Hamilton against John Colville, M.P., iron manufacturer, Motherwell, in which he concluded for payment of £164, 1s. 2d., being the amount of his account for professional services in connection with the Motherwell and Bellshill Railway Bill, of which the defender was the principal promoter. The defender admitted that the pursuer had been employed by the promoters as local agent in Motherwell in connection with the bill, and stated that they were willing to pay the pursuer's legitimate charges for work done in that capacity, but that they refused to pay a sum of £93, 12s. charged by the pursuer for going to and attending in London when the bill was before the Select Committee of the House of Commons, in respect that he was not requested by the promoters to go there.

Proof was allowed and led.

From the proof it appeared that the pursuer was employed by the defender as local agent at Motherwell in connection with the Motherwell and Bellshill Railway Bill.

The pursuer was Town-Clerk of Motherwell, and had been selected to act as local agent on account of his local knowledge. The principal agents for the bill were Messrs H. Lamond Lang & Company, writers, Glasgow.

The conditions of the pursuer's employment were embodied in the following letters:—

“John Colville, Esq., M.P.,
Motherwell. 21st November 1899.

“*Motherwell and Bellshill Railway Bill.*

“Dear Sir,—As promised at our meeting to-day, I now write you with reference to my acting for the promoters of this bill. While it is natural that the promoters should desire to know the exact figure it will cost them for agency, owing to the nature of the work it is practically impossible to name a figure that would be fair to both parties. I am willing to undertake the work and do all I can to promote the bill on the usual professional terms, subject, if desired, to taxation of my account by the Sheriff Court Auditor at Hamilton. As requested I am calling meeting of traders for to-morrow night—Yours faithfully,

“JAMES BURNS.”

“Messrs H. Lamond, Lang, & Co.,
Writers, Glasgow. 22nd November 1899.

“Dear Sirs,—I send you copy of letter I yesterday addressed to Mr Colville, M.P., and copy of his reply. To prevent any possible misunderstanding, it will be as well that I confirm the cancelment by 'phone last week of my letter to your Mr Lang on this subject, which I now do. Anything which I do, whether at your request, that of the Messrs Colville, or on my own initiative, in the promotion or interests of the bill will be on the terms stated in my letter of yesterday to Mr Colville.—Yours faithfully, JAMES BURNS.”

When the case was before the House of Lords Committee in May 1900 the pursuer did not attend in London. He had intimated that as he was busy he would prefer not to go to London at that time unless his presence was considered necessary, and had been informed that it was not necessary for him to go. After the bill had passed the House of Lords the local feeling with regard to it changed considerably. The Commissioners of Motherwell had previously been unanimously in favour of the bill, but after the hearing before the House of Lords Committee some of them changed their opinions and became hostile. When the time for the hearing before the House of Commons was approaching the pursuer intimated to Messrs Lamond & Lang that he proposed to attend. They did not intimate any objection to his doing so. The pursuer did not receive express instructions either from Messrs Lamond or from the defender to attend in London when the bill was before the House of Commons Committee. He was not expressly told that he was not so to attend. The pursuer went to London on 14th July. He accompanied the witnesses for the promoters. He left from Glasgow, and after calling at Mr Lang's office was seen off at the train by him. Mr Lang, with reference to this, deponed—“I understood he was going (to London) on his own account and for a holiday.” On his arrival in London he took the witnesses to a boarding-house, where he had arranged for their accommodation. He then called at Mr Lamond's businessroom at the Westminster Hotel along with some of the witnesses, and saw Mr Lamond. He attended the sittings of the House of Commons Committee and sat beside the promoters and Mr Lamond. He made suggestions for the examination and cross-examination of witnesses. It was admitted that he was of use to the promoters in this way, and also in interviewing witnesses. Neither Mr Lamond nor the defender objected to his attendance before the Committee, nor did either of them warn him that he was not to expect any remuneration for his services there. The defender deponed that he thought the pursuer was attending before the Committee by instructions of Mr Lamond. Mr Lamond deponed that he understood the pursuer was giving his attendance because of his personal interest in the bill, and was there “to see the fun” and for a holiday. The pursuer was not present at the consultations with counsel. Towards the close of the evidence Mr Lamond said to the defender, with regard to the pursuer, “What is that fellow doing here? I did not ask him to come up.” The defender deponed that this was the first intimation he had that the pursuer was there without instructions from Mr Lamond. After all or nearly all the evidence had been led, but before counsel had been heard, the pursuer was told that there was no occasion for his staying on and that he might go home. Upon receiving this intimation the pursuer went home, and he made no charge for attendance after that date.

The pursuer's charge for his attendance in London was as follows:—(1) Going to and attendance in London when bill before Select Committee of House of Commons—engaged 10 days, £63; (2) Personal expenses—11 days, £23, 2s.; (3) Travelling expenses, £7, 10s.—Total, £93, 12s.

On 14th March 1901 the Sheriff-Substitute (DAVIDSON) pronounced an interlocutor, in which he found, *inter alia*, that the disputed items of the pursuer's account in connection with his attendance in London were not proper charges against the defender, and *quoad* the remainder of the account, remitted it for taxation.

The pursuer appealed to the Sheriff (BERRY), who on 21st May 1901 adhered to the interlocutor of the Sheriff-Substitute.

On 28th May 1901 the Sheriff-Substitute, in respect that parties had dispensed with taxation of the account, decreed against the defender for £66, 1s. 8d., being the sum admitted by the defender.

The pursuer appealed to the Court of Session, and contended that the evidence established that his attendance in London had been given on the employment of the defender. He cited *In re Storer* (1884), 26 Ch. D. 189; *In re Foster* (1878), 8 Ch. D. 598.

At advising—

LORD JUSTICE-CLERK—I have felt this to be an anxious case, and have again carefully read the evidence. That Mr Burns was employed to act as local agent by the defender, and on the terms stated by him, I have no doubt whatever. When the bill was before the First House Mr Burns did not wish to go to London, being at that time busy, and it was accordingly arranged that he should not go. Apparently, subsequent to the decision in the House of Lords, the circumstances had changed, and some of the local witnesses turned round in their opinions, so that they could not be relied upon to support the bill, and accordingly the position of the bill was one of some anxiety to the promoters. Now, Mr Burns went to London in connection with the inquiry in the House of Commons. My impression is that during the whole of the proceedings in the Commons Mr Burns was actively engaged, with the consent of the promoters of the bill and their principal agents, in doing substantial work on behalf of the promoters as their adviser and agent, and also in sitting with their counsel and solicitor in Committee and giving advice. Up to a late point there was no suggestion that he acted as an amateur. That leads me to consider what was the understanding with Messrs Lamond and Lang as to the footing on which he was to go to London. Mr Lang's evidence did not impress me as being very probable. He says—"I understood he was going on his own account and for a holiday." Mr Lang accompanied him to the station in charge of some of the witnesses, and I think the suggestion that he was in these circumstances going for a holiday is extravagant. There is one circumstance which proves that that was not the fact, viz., that when the witnesses had all been examined, and it was

suggested that Mr Burns should go away, he did not remain in London, but went straight back to his business in Motherwell. Neither can I accept the evidence of Mr Lamond, who up till a late stage took all the assistance that he could get from Mr Burns, and then at the last was heard to say that he did not know what that fellow was doing there. On the whole matter, I am of opinion that the circumstances indicate plainly that Mr Burns was employed and used as an agent by the defender, and therefore that he has a reasonable claim to a fair remuneration for the services which he gave.

LORD YOUNG—I concur with your Lordship that the judgment of the Sheriff is erroneous and that the action is well founded, and that the defences ought to be repelled, and the pursuer to have decree in terms of the conclusions, being strongly of opinion upon the evidence that going to London upon this occasion, and giving the services which Mr Burns undoubtedly did, was within the scope of his employment, he honestly and, I think, reasonably exercising his judgment that it was in the interests of his clients that he should do so. The only other observation which I think it proper to make is, that I quite appreciate the view which, as explained by Mr Campbell, the pursuer takes, that it is in his interest, individually and professionally, that this case should be decided by the Court rather than that there should be an agreement to abandon part of his claim and to take what was represented—I do not agree with the representation—as a generous offer on the other side.

LORD TRAYNER—I am of opinion with your Lordship that Mr Burns went to London as the local agent for this bill, and I am also of opinion with your Lordship that he was received in London as such agent, and that his services were taken full advantage of for the whole time he was engaged before the Committee of the House of Commons.

LORD MONCREIFF was absent.

The Court recalled the interlocutors of 14th March and 21st and 28th May 1891; found in fact (1) that the pursuer was employed by the defender as local agent at Motherwell in connection with the Motherwell and Bellshill Railway Bill; and (2) that the account sued for was duly incurred by the defender to the pursuer, and was due by the defender; repelled the defences; and granted decree in terms of the conclusions of the action.

Counsel for the Pursuer and Appellant—W. Campbell, K.C.—W. Thomson. Agents—Bruce, Kerr, & Burns, W.S.

Counsel for the Defender and Respondent—Dundas, K.C.—Hunter. Agents—W. & J. Burness, W.S.