

on the ground that the cause *quoad* review was a civil one and outwith the jurisdiction of the Court.

Argued for the respondents—The appeal ought to have been taken to the Court of Session and not to the High Court of Justiciary. The respondents were a limited liability company and could not be imprisoned. In proceedings by way of summary complaint the jurisdiction was civil or criminal according as imprisonment was not or was an appropriate penalty—Summary Procedure (Scotland) Act 1864, section 28; Summary Prosecutions Appeals (Scotland) Act 1875, section 7. The provisions in section 9, sub-section 4, of the Summary Jurisdiction (Scotland) Act 1881, that appeals “under the Summary Jurisdiction Acts shall be taken to the High Court of Justiciary at Edinburgh or on circuit,” only meant that appeals in criminal cases could be heard in a Circuit Court as well as in the High Court. Moreover, the concluding words of that section “at Edinburgh or on circuit” had been repealed by the Statute Law Revision Act 1894 as superfluous, in view of section 44 of the Criminal Procedure (Scotland) Act 1887, which enacted that all sittings of the Court of Justiciary in Scotland should be sittings of the High Court of Justiciary. The practice had been settled by the decisions—*North British Railway Company v. Dumbarton Harbour Board*, January 13, 1900, 3 Adam 121, 2 F. (J.C.) 28, 37 S.L.R. 294; *Simpson v. Corporation of Glasgow*, February 28, 1902, 4 F. 611, 39 S.L.R. 371; *Braid v. Swan & Sons, Limited*, March 4, 1903, 5 F. 579, 40 S.L.R. 426. There had been no prorogation of jurisdiction on the part of the respondents, as either party might appeal, and the appellants selected the Court of Appeal—Summary Prosecutions Appeals (Scotland) Act 1875, section 3.

Argued for the appellant—In the *Dumbarton Harbour* case Lord Moncreiff had strongly dissented on the ground that the test ought to be whether or not imprisonment would naturally follow the offence. In *Lindsay v. Low & Company*, February 20, 1902, 3 Adam 578, 4 F. (J.C.) 45, 39 S.L.R. 489, the Court reserved the question of competency, and dealt with the case on its merits. That course should be followed here. The respondents had prorogated jurisdiction in consenting to the stated case. The effect of sub-section 4 of section 9 of the Summary Jurisdiction (Scotland) Act 1881 had never been considered by the Court of Justiciary—only by the Court of Session. The case of *Simpson* was a civil cause and not binding on the Court of Justiciary. Under the Sheriff Court Act of 1853, causes under the value of £25 were not appealable, and the penalty here was under that sum. [LORD JUSTICE-CLERK—The penalty is not a question of value—it has nothing to do with it.]

LORD M'LAREN—The question as to which of the two, the Court of Session or the Court of Justiciary, has jurisdiction in appeals of this kind was first raised in the

Court of Justiciary, and the decision was that the jurisdiction is not of a criminal nature where the prosecution is directed against a company, because a company cannot suffer a sentence of imprisonment. If the question were open, much might be said for the other construction, because it is more convenient that the jurisdiction should be determined by the effect of the enactment contravened rather than by the *status* of the person who is accused of the contravention. In both Divisions of the Court of Session the judgment in the Court of Justiciary has been followed. It is true that in a later case, *Lindsay v. Low & Co.*, the Court gave a judgment which is said to be inconsistent with the previous decisions, but I rather infer that in the particular case the objection to the jurisdiction had been waived or was not insisted on. In the state of the authorities we cannot come to a contrary conclusion unless we were to refer the question to a larger Court, and in my opinion the question is not of sufficient moment to make a rehearing necessary or expedient. On the contrary, it is better to follow the authorities, because once the rule is fixed there is no difficulty in applying it. No doubt can be raised in the mind of the prosecutor, for there never can be any doubt as to whether a sentence of imprisonment can follow the conviction of a trading company. I think, therefore, that the objection should be sustained.

The LORD JUSTICE-CLERK and LORD STORMONTH DARLING concurred.

The Court dismissed the appeal.

Counsel for the Appellant—The Solicitor-General (Dundas, K.C.)—Blackburn, A.-D. Agent—W. J. Dundas, C.S., Crown Agent.

Counsel for the Respondents—Wilson, K.C.—D. P. Fleming. Agent—P. Gardiner Gillespie, S.S.C.

COURT OF SESSION.

Friday, November 4.

FIRST DIVISION.

[Sheriff Court at Glasgow.]

M'DAID v. COLTNESS IRON
COMPANY, LIMITED.

Expenses—Modification—Appeal for Jury Trial—Small Amount Awarded by Jury in Action Appealed from Sheriff Court.

In an action of damages for personal injuries brought in a Sheriff Court and appealed for jury trial under the Judicature Act, held that while the Court has power to modify the expenses of the successful pursuer, it will not do so where the only ground adduced for modification is that the smallness of the award (£25) proves that the case ought to have remained in the Sheriff Court, and where it is not shown that the pur-

suer by selecting trial by jury incurred unnecessary or unreasonable expense.

Patrick M'Daid, residing at 37 Manse Street, Coatbridge, was injured while in the employment of the Coltness Iron Company, Limited, and on their premises, by a piece of coal falling upon him. He raised this action against them in the Sheriff Court at Glasgow, in which he sought to recover as damages £250 at common law, or alternatively £156—under the Employers Liability Act 1880.

Upon 24th February 1904 the Sheriff-Substitute (STRACHAN) allowed a proof. The pursuer appealed to the First Division of the Court of Session and the case went to jury trial. The jury returned a verdict for the pursuer and awarded him £25 of damages. No tender had been made.

On the pursuer moving the Court to apply the verdict and for expenses the defenders asked that the expenses should be subject to modification looking to the smallness of the award.

Argued for the defenders—It was now an established rule that the Court would modify the expenses of a successful pursuer in a jury trial which owing to its trifling nature ought never to have been appealed into the Court of Session—*Brennen v. Dundee and Arbroath Joint Railway Company*, May 26, 1903, 5 F. 811, 40 S.L.R. 383; *Lafferty v. Watson, Gow, & Company, Limited*, June 3, 1903, 5 F. 885, 40 S.L.R. 622. This case was a *fortiori* of the previous cases, as evidenced by the smallness of the award, which was the only test. It might be said the appeal was in virtue of a statutory power; but though that were so, the Court had power to deal with the expenses, and if it thought right only allow them on the Sheriff Court scale—*Jamieson v. Hartil*, February 5, 1898, 25 R. 551, 35 S.L.R. 450; *Dickie v. Scottish Co-operative Wholesale Society, Limited*, November 17, 1903, 6 F. 112, 41 S.L.R. 64. Further, this case, while the appeal might be under the Judicature Act (6 Geo. IV. c. 120), section 40, was in substance one under the Employers Liability Act 1880 (43 and 44 Vict. c. 42), and the appeal was an evasion of that Act. An action founded on the Employers Liability Act 1880, which was brought into the Court of Session from the Sheriff Court, was by section 6 (3) of that Act subject to the condition contained in section 9 (2) of the Sheriff Courts (Scotland) Act 1877 (40 and 41 Vict. c. 50), that the Court if satisfied that the case might have been tried in the Sheriff Court might only allow to the party removing it therefrom Sheriff Court expenses—*Kane v. Singer Manufacturing Company*, May 21, 1904, 41 S.L.R. 571. The Court should therefore here modify to the Sheriff Court scale, or at least give a substantial modification.

Argued for the pursuer—There should be no modification here, for the pursuer was in exercise of a statutory right, and had obtained a substantial award although not as much as he considered himself entitled to—*Casey v. Magistrates of Govan*, May 24, 1902, 4 Fraser 811, 39 S.L.R. 635. Where

as here there had been no abuse of the statutory power there should be no modification, unless as provided by section 40 of the Court of Session Act 1868 (31 and 32 Vict. c. 100), *i.e.*, where the pursuer failed to obtain a verdict for £5.

At advising—

LORD KINNEAR—I do not think it necessary to express any opinion on the general question which was argued with so much citation of authority except this, that the power of the Court to relieve the losing litigant of any part of the expenses which may have been unnecessarily or unreasonably incurred by his successful opponent appears to me to be beyond question. Whether the mere fact that the sum awarded by the jury is a very small one is sufficient to show that the expense of a jury trial was unnecessary and unreasonable is a very different matter. My own view is, that when that question arises it must be determined, not merely by reference to the amount awarded by the jury, but after taking into account all the circumstances of this particular case, except perhaps in the case which is specially regulated by the only statutory enactment which deals with this matter—I mean the 40th section of Court of Session Act of 1868. That enactment does not apply to the present case, because the pursuer recovered a much larger sum than £5, and taking the whole circumstances into account I think that the pursuer in this case ought to have his expenses as taxed without further deduction. It is quite true that the amount of damages awarded him is small, and is below the sum of £40, which is the lowest sum for which he can appeal to this Court for jury trial under the Judicature Act; but I see no reason to suppose that he and his advisers—because this is a matter which is considered by the advisers of a man in the circumstances of the pursuer rather than by himself—did not honestly believe that he should have a larger sum than £40. I think he might fairly maintain to the jury that a larger sum than that was due to him, and indeed, although I am perfectly satisfied as to the sum given by the jury, I should not have been surprised if it had been somewhat larger. Juries differ on that question; and I see no reason to doubt that a demand for something more might honestly have been made. I think the case must be looked at in this way, because in my opinion the action is founded on a liability at common law, and was properly appealable under the Judicature Act. It is true that the pursuer made an alternative claim under the Employers Liability Act, but in my opinion it is clear that the case, as established by the verdict of the jury, was a valid case at common law, and therefore we do not require to consider the effect of the special clauses in the Employers Liability Act regulating the conditions under which an appeal under that statute may be taken. Accordingly I deal with the case as an appeal under the Judicature Act.

Now, the sum actually awarded is small but I do not think the question between the parties as it went to the jury was really a question of amount at all. The defenders might have made it a question of amount by making a tender. They did not think fit to do so, but, on the contrary, they maintained vigorously, as they were quite entitled to do, that they were not answerable for any fault whatever, but that they had exercised all reasonable care and prudence in taking precautions for the safety of their workmen. That was the question, and on that the jury found a verdict against them. That was a question of fact well fitted for jury trial, because it depended on conflicting evidence which was mainly circumstantial, and although I am quite satisfied with the verdict of the jury, the facts as presented to them might have suggested different views to different minds. It is therefore quite possible that if the case had gone to the Sheriff his judgment might have been appealed to the Sheriff-Depute, and his judgment again to this Court, so that there might have been three discussions instead of one. It is therefore by no means certain that the course now recommended to the pursuer would have been less expensive than that which he chose for himself. But then I am of opinion that it was for his advisers to consider which course should be taken, and that the pursuer had a right under the statute, if so advised, to say whether he preferred the verdict of twelve average jurymen to settle the matter once for all, or to have the judgment of a single Judge subject to a first and second, and possibly even to a third appeal, if any question of law could have been extracted from the findings of fact.

On the whole case therefore I am of opinion that there is not sufficient ground for depriving the pursuer of the small amount of damages awarded to him by the jury by the process of depriving him of the expenses of obtaining the award. I think the pursuer has been successful, and is therefore entitled to his expenses, and that there is no special reason for diminishing his claim.

The LORD PRESIDENT, LORD ADAM, and LORD M'LAREN concurred.

The Court applied the verdict and gave decree for the amount of the award with expenses.

Counsel for the Pursuer and Appellant—Gunn. Agents—Mackay & Young, W.S.

Counsel for the Defenders and Respondents—Hunter. Agents—W. & J. Burness, W.S.

Tuesday, November 8.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.]

BROWN v. JOHN HASTIE & COMPANY, LIMITED.

Patent—Patents for Inventions—“Master” Patent—Construction of Specification—New and Unknown Result Obtained by Mechanical Device Described in Specification—Mechanical Equivalent—Infringement.

In steamship steering engines, which are only intended to run when the ship's helm is altered, it is necessary that the control valve should move easily, and it therefore cannot fit so tightly as to prevent the constant escape and waste of steam when the engine is at rest. Prior to 1897 devices were known for economising steam in continuous running engines when in motion, but there was no known means of preventing the escape of steam through the loose fitting control valve of steering engines when the engine was at rest.

In 1897 a patent was taken out by A for an apparatus whereby a cut-off valve actuated in unison with the control valve by the movements of the wheel excluded the passage of steam into the casing of the control valve when the wheel was in a neutral position and the steering engine at rest, the connection between the two valves being by a certain device described in A's specification.

In 1902 B obtained a patent for an apparatus which achieved the same result as A's patent, by a cut-off valve working in unison with the control valve of steering engines, the two valves being connected by a well-known device which was the mechanical equivalent of the device described in A's specification.

In an action brought by A against B for infringement of patent, *held (aff. judgment of Lord Kyllachy, after a proof)* that A's invention achieved a new and important result not previously effected, that his patent was not limited to the particular mode of actuating the cut-off valve described in his specification, but was a “master” patent fully covering his invention, and that B's patent was an infringement of A's.

In 1897 a patent was granted to Andrew Betts Brown, Rosebank Iron Works, Edinburgh, for an invention relating to improvements in connection with the valves of steering and the like engines.

In steering engines the valve which is controlled by the movements of the wheel is necessarily sensitive and cannot be made to fit tight; in order that it may move easily it has to fit so loosely as to allow a constant escape of steam when the engine is at rest.