Thursday, July 15.

SECOND DIVISION.

BOND *v.* DALMENY OIL COMPANY, LIMITED.

Expenses—Sheriff Court—Jury Trial—Appeal—New Trial—Expenses of Appeal.

A pursuer in a jury trial in the Sheriff Court having obtained a verdict, the defenders appealed to the Court of Session, which set aside the verdict as being contrary to the evidence and ordered a new trial. The defenders having moved for the expenses of the appeal, the Court *found* the pursuer liable in such expenses.

Robert Bond, residing at Fann Cottage, Dalmeny, brought an action in the Sheriff Court of the Lothians and Peebles at Linlithgow against the Dalmeny Oil Company, Limited, Dalmeny Oil Works, in which he sued for £250 of damages at common law, and, alternatively, for £117 under the Employers' Liability Act 1880 (43 and 44 Vict. cap. 42), in respect of the death of his child, the late Robert Bond junior. The cause having been subsequently tried before a jury the pursuer obtained a verdict in which the damages were assessed at £50. The defenders appealed to the Court of Session for a new trial, and the Court set aside the verdict as being contrary to the evidence and ordered a new trial, the Lord Justice-Clerk pointing out in his opinion that there were no fewer than nine questions put to the jury to all of which the jury returned answers in favour of the pursuer and that the evidence was against such answers save in the case of one which was doubtful but had no material effect on the result.

The defenders thereupon moved for the expenses of the appeal, and argued—The defenders were entitled to the expenses of the appeal. *Quoad ultra* expenses should be reserved. The case of *M'Coll* v. *The Alloa Coal Company, Limited*, 46 S.L.R. 465, where neither party was found entitled to the expenses of the appeal, was very special. In that case the Lord Justice-Clerk (p. 468) said that both parties were to blame.

Argued for the pursuer—Expenses should be reserved. There was no case where the Court in allowing a new trial mulcted the pursuer in the expenses incidental to the new trial. The expenses of the appeal were very large, and an allowance of these to the defenders practically prohibited the pursuer going forward to a new trial.

The Court pronounced this interlocutor—

"Sustain the appeal; recal the said interlocutor appealed against; set aside the verdict, and remit the cause to the Sheriff to allow the parties a new trial; find the pursuer liable in expenses in this Court, and remit the same to the Auditor to tax and to report to the Sheriff, with power to him to decern for the taxed amount of the expenses hereby found due, and the expenses of the first trial to be expenses in the cause and to be disposed of by the Sheriff."

Counsel for Pursuer (Respondent)—G. Watt, K.C.—MacRobert. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for Defenders (Appellants)—Hunter, K.C.—Carmont. Agents—W. & J. Burness, W.S.

Friday, July 16.

FIRST DIVISION.

(Before Seven Judges.)

[Sheriff Court at Glasgow.

[Lord Skerrington, Ordinary.

DONALDSON BROTHERS *v.* COWAN.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched. I, sec.* 16—*Review of Weekly Payment—Date from which Payment may be Varied.*

Where an application to review a weekly payment under the Workmen's Compensation Act 1906 is brought before an arbitrator, and the workman has recovered prior to the date of the application, the arbitrator is not bound to treat the agreement for, or award of, the weekly payment as enforceable up to the date of his decision, but is entitled to vary the payment as from the date of the application, though not from any earlier date.

Steel v. *Oakbank Oil Company, Limited*, December 16, 1902, 5 F. 244, 40 S.L.R. 205; and *Pumpherston Oil Company, Limited* v. *Cavaney*, June 23, 1903, 5 F. 963, 40 S.L.R. 724, *overruled*. *Morton & Company, Limited* v. *Woodward*, [1902] 2 K.B. 276, *approved*.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58)—*Weekly Payment—Suspension of Charge Relating to Period Subsequent to Recording of Memorandum—Competency.*

A workman whose employers had agreed to pay him compensation recorded a memorandum of the agreement. Thereafter his employers terminated the weekly payments at their own hand on the ground that the workman had recovered. The workman having charged for payment, his employers brought a suspension.

Held that as the suspension related to a period subsequent to the recording of the memorandum, it was not the appropriate remedy, and must be refused *simpliciter*.

The Lochgelly Iron and Coal Company, Limited v. *Sinclair*, March 19, 1909, 46 S.L.R. 665, *followed*.

The Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), enacts—Schedule I (16)—"Any weekly payment may be reviewed