

defenders' employment. At the time he was injured the pursuer was assisting to demolish certain buildings at the junction of Bell Street and High Street, Glasgow. While he was so engaged an old foundation wall, at the foot of which he was working, suddenly collapsed, and fell upon him, owing, as he alleged, to the failure of the defenders to use the necessary and proper precautions. The defenders denied fault. The case was tried before the Lord President and a jury on 18th March 1911 on an issue in ordinary form. The jury having returned a verdict for the defenders, a bill of exceptions was taken, but on 1st November the Court refused the bill. The defenders having moved the Court to apply the verdict, counsel for the pursuer craved their Lordships to assess the compensation to which the pursuer was entitled under the Workmen's Compensation Act 1906.

The defenders opposed the motion, and argued—(1) The motion was incompetent where, as here, the action was raised in the Court of Session. It could only be made in cases which had originated in the Sheriff Court, for claims under the Act must originate there. The word "Court" in sec. 1 (4) of the Act meant Sheriff Court. That was apparent from the provisions of the A.S. 26th June 1907 as to costs (sec. 10) and as to the transmission of the certificate of the award (sec. 11, (3)). (2) The motion was not timeously made, for it ought to have been made after the jury had returned their verdict. (3) The pursuer was barred from making such a motion by going before a jury, for the Act provided no machinery for a remit to assess compensation in such cases. Alternatively the Court should allow a proof, as was done in *M'Kenna v. United Collieries, Limited*, June 27, 1906, 8 F. 969, 43 S.L.R. 713.

Argued for pursuer—The motion was not limited to cases originating in the Sheriff Court, for the Act did not say so. (2) The motion was timeously made, for it had been made at the earliest possible moment. *Esto* that a workman who desired to have compensation assessed was bound to apply then and there to the Judge trying the case—*Edwards v. Godfrey*, [1899] 2 Q.B. 333—the pursuer had done so here, for until the bill of exceptions had been disposed of the case was still pending—*Isaacson v. New Grand (Clapham Junction), Limited*, [1903] 1 K.B. 539. Reference was also made on this point to *Cattermole v. Atlantic Transport Company*, [1902] 1 K.B. 204. (3) The pursuer was not barred by going before a jury, for it was not the province of the jury but of the Judge to assess the compensation under the Act—*M'Govern v. The Glasgow Coal Company, Limited*, October 26, 1906, 14 S.L.T. 359. There was sufficient in the evidence led to enable the Court to assess compensation, but if not then the pursuer was entitled to a proof—*M'Kenna (cit. sup)*.

LORD PRESIDENT—We shall consult with the Second Division before deciding this case.

At advising, the judgment of the Court (the LORD PRESIDENT, LORD KINNEAR, and LORD JOHNSTON) was delivered by

LORD PRESIDENT—In this case we have consulted the other Division, and the judgment of the Court is that in such cases the motion for assessment of compensation under the Workmen's Compensation Act must be made before the verdict is applied, and if not so made it will be too late. The motion when made will entitle the party making it to an inquiry as to whether, in the first place, in cases where this is doubtful, the accident in question arose in the course of and out of the employment, and, in the second place, as to the amount of compensation due. It cannot be supposed that the defender should come to the trial in a state of preparation as to the question of the amount due, because he does not know whether the option of claiming compensation will be exercised by the pursuer in the event of the trial resulting in a verdict against him. Accordingly, if the motion is made in time, either the Lord Ordinary before whom the case is tried, or one of the Judges of the Division, must act in the same way as an arbiter, except that there would be no appeal from him by way of stated case.

Applying that to this case, we shall depute to one of the Judges of the Division to deal with it, and as he will be sitting as a *quasi* arbiter the proceedings will be informal and will not be regulated by ordinary Court procedure, because the Judge will be master of the procedure. It will be necessary, however, for the future regulation of such proceedings that this matter be dealt with by Act of Sederunt.

As to the question of expenses, they, as taxed, will be deducted from the amount of compensation, if any is found to be due.

The Court, without pronouncing any formal interlocutor, continued the case in order that parties might, if possible, adjust the amount of compensation.

Counsel for Pursuer—Munro, K.C.—H. M. Mackay. Agents—St Clair Swanson & Manson, W.S.

Counsel for Defenders—Crabb Watt, K.C.—C. H. Brown. Agents—Inglis, Orr, & Bruce, W.S.

Friday, November 24.

SECOND DIVISION.

[Lord Skerrington, Ordinary.]

GRIERSON v. MITCHELL.

Process—Reclaiming Note—Boxing of Prints—Correspondence not in Process.

Only such documents as are in process may be printed and boxed to the Inner House on a reclaiming note. A party wishing to found in the Inner House on a document not lodged in

process must move the Court for leave to lodge it before printing it.

Mrs Alice Stanley Peake or Grierson reclaimed against an interlocutor of the Lord Ordinary (Skerrington) dismissing an action of damages at her instance against Charles Ernest Mitchell. In the Inner House prints were boxed to the Court containing letters between the agents which had not been lodged in process.

In his opinion disposing of the case LORD SALVESEN observed—In the Inner House various prints were boxed to the Court containing some correspondence which had passed between the agents for the parties, partly before and partly after the action was raised. It appeared in the end that none of the correspondence was in process, that there was no admission of its genuineness, and it was said by the defender to be incomplete. In these circumstances it was entirely irregular to print and box the various appendices which contain it. It cannot be too clearly understood by the profession that no documents must be printed for the Inner House which have not been lodged in process, and it is the duty of the clerk to refuse to receive into the process any print of documents which are not already in process. If there has been an error in failing to lodge some documents on which parties intended to found, a motion must be made to the Court for leave to lodge it in process. So firmly has this rule been fixed in our practice that the Court is entitled to assume that any appendix which is boxed to it will contain only documents which are in process.

In the circumstances above narrated I think it is the duty of the Court to refuse to look at the correspondence.

The LORD JUSTICE-CLERK and LORD GUTHRIE concurred.

LORD ARDWALL was absent.

LORD DUNDAS was sitting in the Extra Division.

Counsel for Pursuer and Reclaimer—Wilson, K.C.—Armit. Agents—Clark & Macdonald, S.S.C.

Counsel for Defender and Respondent—Blackburn, K.C.—Hamilton. Agents—Carmichael & Miller, W.S.

HOUSE OF LORDS.

Friday, December 1.

(Before the Lord Chancellor (Loreburn), Lord Alverstone, Lord Atkinson, and Lord Shaw.)

LAIRD & SON v. BANK OF SCOTLAND AND OTHERS.

(In the Court of Session, June 15, 1910, 47 S.L.R. 794, and 1910 S.C. 1095.)

Right in Security—Transfer of Property—Appropriation of Goods.

Circumstances in which their Lordships held, following the judgment of the Lord Ordinary who had taken a proof, that certain logs of timber lying in a store had been sufficiently identified and appropriated as belonging to a transferee so as to transfer the property to him.

The case is reported *ante ut supra*.

Messrs Price & Pierce, Limited, claimants and reclaimers, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—This case in some respects comes before the House in a most unsatisfactory way. The inquiry as to facts, which was certainly long enough to fill a thick volume, nevertheless was on two crucial points—the only two points of fact which in their Lordships' view really signify—left in a somewhat vague way.

It is quite unnecessary to recite this oft-repeated story, because the inferences to be drawn as regards the greater part of what took place seem not to be in the least difficult, and there does not seem to be any substantial difference of opinion among the learned Judges in the Courts below, and I therefore shall not at all attempt to recapitulate the incidents of these transactions.

There are really two questions, and very short ones, which settle this case. The first question is in regard to the portion of 1166 logs, and the attendant portion the 416 logs, whether in regard to the 1166 logs they were marked F 17, and so marked before the 10th April. Now if they were so marked, then Mr Fraser (who was a perfectly honest man, against whom not the smallest imputations can be made or have been made at the Bar of your Lordships' House), who entered into this transaction honestly and took security and gave undoubtedly full value for it, held these logs through the warehouseman who held them for him, and the timber which was to be appropriated to his delivery order was identified and specifically allotted to him. The question then is, Was that mark F 17 put upon those logs so as to distinguish them before the 10th April? It was certainly the opinion of the Lord Ordinary that that had been done. It was the opinion of the Inner House that that had