S.L.R. 862) Lord Salvesen analyses these English cases and says—"In my opinion incapacity for the purposes of the Workmen's Compensation Act is primarily physical incapacity, in which may well be included such personal disfigurement as may lessen the sphere of employment, although the power of work remains as good as before. It does not, in my opinion, include inability to get employment which arises from something not personal to the workman." Had the state of the Scotch decisions been in accord with these sentences, a difference between them and the English cases would have been far to seek.

In the case, however, of *Boag* v. *Lochwood Collieries, Limited* (1910 S.C. 52, 47 S.L.R. 47) the question of what is the meaning of the statutory expression "incapacity for work" was broadly and emphatically decided. The case arose under the Workmen's Compensation Act 1897, but the language under construction and the point were the same as in the subsequent Act. A workman averred that he was entitled to have a weekly payment reviewed and increased in respect that his employers were unable to give him suitable light work, and that he was unable to obtain light employment elsewhere. It was held that these grounds were not relevant for inquiry. The Lord Justice-Clerk said—"As I read the Act of Parliament and relative schedule the question to be decided in an application to assess compensation, or under an application for review of weekly payments, is a question of the man's physical capacity to work. Now in this case it had been decided by agreement that the workman was partially capable for work. Is it any reason for reviewing the payment to say that the employers cannot find him suitable work for his capacity, or that he has not been able to find such work himself? If the appellant means that his averments, if proved, would of themselves be a sufficient ground for saying that the compensation must be increased to the full allowance under the statute, I should certainly not for myself yield for one moment to any such demand. I take it that the whole question is that of "capacity to work," which cannot be decided merely by the fact that the workman has not got work, but only by such evidence as satisfies the Court whether or not he is able to work. This is a broad affirmance of the proposition that incapacity under the Act must be limited to physical incapacity and to that alone. So stated, I think the proposition, with which I have already dealt at length in the earlier part of my opinion, to be an unsound proposition, and the decision of *Boag* to be erroneous. On 28th June 1911 the First Division pronounced a decision in the same sense in the case of *Macdonald or Duris* v. *Wilsons and Clyde Coal Company* (reported *ante*). The case, however, following *Boag* as it did, was treated as being governed by that decision. It follows that, in my view, that case has also been erroneously decided.

I humbly think, accordingly, that the decision of the Court below should be reversed, and that the case should be remitted for adjudication by the arbitrator as to the amount of compensation to be awarded to the appellant.

Judgment appealed from reversed.

Counsel for Appellants -R. B. D. Acland, K.C.—E. W. Carr. Agents—Murr, Rusby, & Archer, Solicitors.

Counsel for Respondent--W. Shakespeare. Agents—Helder, Roberts, Walton, & Giles, Solicitors.

COURT OF SESSION.

Friday, May 17.

FIRST DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Dundee.

DAVID ALLEN & SONS, BILLPOSTING LIMITED *v.* THE DUNDEE AND DISTRICT BILLPOSTING COMPANY, LIMITED.

Sheriff — Process — Appeal — Competency — Value of Cause—Action for Interdict and £50 Damages — Appeal on Question of Damages only—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, c.* 51), *sec.* 28.

The tenant of an advertising hoarding brought an action of interdict and damages in the Sheriff Court against his successor, averring that the latter had assumed possession too soon, thereby interfering with his (the pursuer's) advertisements, the sum claimed as damages being £50. By the time the Sheriff-Substitute came to deal with the question of damages the pursuer's lease had expired, so that the crave for interdict was no longer part of the case. He accordingly recalled the interim interdict originally granted, and awarded the pursuer £50 damages. The defenders appealed.

Held that as the conclusions for interdict had become of purely historical interest, the value of the cause was now entirely pecuniary, and that as the sum sued for did not exceed £50, the appeal was incompetent and must be dismissed.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51) enacts, sec. 28—"Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute or of a Sheriff, but that only if the value of the cause exceeds fifty pounds. . . ."

David Allen & Sons, Billposting Limited, Dundee, *pursuers*, brought an action against the Dundee and District Billposting Company, Limited, in which they craved interdict against the Dundee and District Billposting Company, Limited, *defenders*, using a certain billposting stance

and hoarding in Dundee, of which stance and hoarding they (the pursuers) claimed to be respectively tenants and owners.

On 2nd December 1911 the Sheriff-Substitute granted interim interdict.

Against this interlocutor the defenders appealed to the Sheriff (FERGUSON), who on 8th December 1911 refused the appeal.

Thereafter on 7th March 1911 the Sheriff-Substitute (NEISH), after a proof, found that the pursuers' lease of the said premises expired on 28th December 1911, and that they (the pursuers) were entitled to remove the hoarding as a trade fixture. He accordingly recalled the interim interdict, and decerned against the defenders for £50 damages, in respect of their having illegally interfered with the pursuers' advertisements on the said hoarding.

The defenders appealed.

On the case appearing in the Single Bills, counsel for the pursuers objected to the competency of the appeal on the ground that the value of the cause was under £50, the only question left in the case being the amount of damages. He cited the Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, c. 51), secs. 7 and 28.

Argued for defenders—The appeal was competent, for the action when raised contained conclusions for interdict. It was immaterial that the question of interdict was no longer before the Court. He cited *Thomson* v. *Barclay*, February 27, 1883, 10 R. 694, 20 S.L.R. 440. [LORD JOHNSTON referred to *Duke of Argyll* v. *Muir*, 1910 S.C. 96, 47 S.L.R. 67.]

LORD PRESIDENT—This case as it was originally presented in the Sheriff Court was an action of interdict and damages raised by a tenant of a hoarding against a tenant who succeeded him when his term of tenancy was over, upon an averment that this incoming tenant had, so to speak, assumed possession too soon, and had put his bills upon the hoarding and obliterated the bills of the prior occupant. The Sheriff-Substitute granted interim interdict. At the time that he came to pronounce judgment on the question of damages the period of the first lease had expired, and therefore there was no longer room for any pronouncement upon the matter of interdict. Accordingly the Sheriff-Substitute recalled the interim interdict previously granted, and found damages due and assessed them at £50. An appeal was taken to this Court, and the objection was raised upon the other side that it was incompetent because the action does not exceed £50.

I am of opinion that that is a good objection. No doubt the action as it was originally raised contained a conclusion for interdict, and if there were anything of that conclusion left in the action it might be competent for us to deal with the case on appeal. But the conclusion for interdict is now of purely historical interest, and there is nothing left in the case but the £50. Where there is any other consideration in a case—any consideration which cannot be measured in money—it would be out of the question to disallow an appeal upon the ground of the pecuniary value of the cause, but as the value of this cause is entirely pecuniary, and also below the prescribed amount, I am of opinion that the appeal must be refused as incompetent.

LORD JOHNSTON—I agree.

LORD SKERRINGTON—I also agree.

LORD KINNEAR and LORD MACKENZIE were sitting with the Extra Division.

The Court sustained the objection and dismissed the appeal.

Counsel for Pursuers—Gentles. Agents—J. Ferguson Reekie, Solicitors.

Counsel for Defenders—J. D. Johnston. Agent—Arthur C. M'Laren, Solicitors.

Saturday, May 18.

SECOND DIVISION.

[Sheriff Court at Glasgow.

HARVEY *v.* STURGEON.

Reparation — Process — Issue — Malice — Want of Probable Cause — Wrongful Arrest—False Charge—Police Constable—Glasgow Police Act 1866 (29 *and* 30 *Vict. cap.* cclxxiii), *sec.* 88.

In an action against two police constables for damages for wrongful arrest followed by a false charge, *held* that as the pursuer's averments did not disclose reasonable grounds for the defenders' actings it was unnecessary to put in issue malice and want of probable cause.

The Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii), enacts—Section 88—"They (the chief-constable or any superintendent, lieutenant, or constable acting under or appointed by him) may search for, take into custody, and convey to the police office any person who is either accused or reasonably suspected of having committed, either within the city or at any place wheresoever beyond the city, a penal offence or any police offence not herein specially directed to be made the subject of a complaint, in respect of which imprisonment may be awarded without the alternative of a money penalty, or any police offence where the name and residence of such person are unknown to the constable and cannot be readily ascertained by him, or any person actually committing any riotous or disorderly conduct or act, or impeding any public thoroughfare."

On 8th February 1911 Duncan Harvey, coppersmith and brassfounder, Glasgow, *pursuer*, brought an action of damages in the Sheriff Court at Glasgow against Alexander Sturgeon and Andrew Stirling, police constables, Glasgow, conjunctly and severally, *defenders*, in which he sued for