

pute referred to it, including the alteration of the recorded memorandum so as to accord with its determination on questions of fact. Assuming, as the Court of Session held, that there may be retroactive alteration in a memorandum for all purposes enforceable as an absolute arbitral-decree I am unable to find any ground for limiting the period for retroactive alteration to the date of the application to review, although differing with hesitation from so authoritative a judgment. In England the recorded memorandum under the Act is enforceable as a County Court judgment, but this difference does not, in my view, in any way affect the power of the arbitration tribunal to which the application for review is made.

I desire to express no opinion on questions of procedure which do not arise in the present case. In my view both questions should be answered in the affirmative, and the appeal allowed.

Their Lordships allowed the appeal without expenses, and answered both questions of law in the affirmative.

Counsel for the Appellants—Macmillan, K.C.—Alexander Neilson. Agents—Boyd, Jameson, & Young, W.S., Edinburgh—Botterell & Roche, London.

## COURT OF SESSION.

Friday, March 20.

### SECOND DIVISION.

[Sheriff Court at Falkirk.]

#### COOK v. BONNYBRIDGE SILICA AND FIRECLAY COMPANY, LIMITED.

(Reported ante, vol. xlviii, p. 243, 1911 S.C. 177.)

*Sheriff—Process—Master and Servant—Appeal—Competency—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), secs. 13 and 14.*

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Section 13. “. . . Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.” Section 14—“In Scotland, where a workman raises an action against his employer independently of this Act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the Sheriff Court and concluding for damages under the Employers' Liability Act 1880, or alternatively at common law or under the Employers' Liability Act 1880, shall, notwithstanding anything contained in that Act, not be removed under that Act or otherwise to the Court of Session, nor shall it be appealed to that Court otherwise than by appeal on a question of

law; and for the purposes of such appeal the provisions of the Second Schedule to this Act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this Act shall apply.”

A father brought an action against the employers of his deceased son at common law and under the Employers' Liability Act 1880 for damages for the son's death.

*Held (following the dicta in Lawrie v. Banknock Coal Company, Limited, 1912 S.C. (H.L.) 20, 49 S.L.R. 98)* that the action was one “by a workman against his employer” within the meaning of section 14, and could not be appealed to the Court of Session otherwise than by appeal on a question of law.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—[quoted in rubric].

Alexander Cook, labourer, Grangemouth, pursuer, brought an action in the Sheriff Court at Falkirk against the Bonnybridge Silica and Fireclay Company, Limited, defenders, for damages for his son's death while working in the defenders' employment, laid at £500 at common law and £200 under the Employers' Liability Act 1880.

After the procedure narrated in the previous report the Sheriff-Substitute (MOFFAT) on 6th October 1911 pronounced an interlocutor assailing the defenders.

The pursuer appealed to the Sheriff (LEES), who adhered to the interlocutor of the Sheriff-Substitute.

The pursuer appealed to the Court of Session in common form.

Argued for the respondents (defenders)—The appeal was incompetent. By section 13 of the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) the action was brought within the provisions of section 14, and by section 14 it could only be appealed to the Court of Session by a stated case on a question of law—*Lawrie v. Banknock Coal Company, Limited, 1912 S.C. (H.L.) 20, 49 S.L.R. 98.*

Argued for the appellant (pursuer)—The appeal was competent. The provisions of section 14 of the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) did not apply to the action, because the pursuer was not a workman within the meaning of the section. The provisions of section 14 related to a matter distinct from workmen's compensation, and therefore they were unconnected with and unaffected by section 13.

At advising—

LORD SALVESEN—[After dealing with the merits and holding that the judgment appealed from was right]—I have dealt with the appeal on the merits on the footing that it is a competent appeal. I reserve my opinion on this point, for as the same question can probably never arise again it is unnecessary to pronounce upon it. All I say is that the grounds of the decision of the First Division in *Lawrie's* case appear to me inconsistent with the views of several of the noble and learned Lords who considered the appeal.

**LORD GUTHRIE**—On the question of competency I agree with Lord Hunter's opinion, which I have had an opportunity of reading. [*His Lordship then dealt with the merits, holding that the judgment appealed from was right.*]

**LORD HUNTER**—On a careful perusal of the opinions delivered by the House of Lords in the case of *Laurie v. Banknock Coal Company, Limited*, 1912 S.C. (H.L.) 20, 49 S.L.R. 98, I am unable to hold that the present appeal is competent. By section 14 of the Workmen's Compensation Act 1906, it is provided—[*His Lordship read the section*]. In terms of the definition clause in that Act (section 13) "any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative, or to his dependants or other person to whom or for whose benefit compensation is payable." By section 30 of the Sheriff Courts (Scotland) Act 1907, it was provided that cases above £50 in value originating in the Sheriff Court "other than claims by employees against employers . . . for damages under the Employers' Liability Act 1880, or alternatively at common law," may be remitted to the Court of Session for jury trial. Section 52 of the same Act enacted that "all . . . statutes . . . now in force so far as the same are inconsistent with the provisions of this Act are hereby repealed."

In the case of *Laurie* the question arose as to the right of the father of a deceased workman, who had raised an action in the Sheriff Court against his son's employers for damages under the Employers' Liability Act, and alternatively at common law, to have the case remitted to the Court of Session for jury trial. The First Division, composed of Lord President Dunedin, Lord Johnston, and Lord Mackenzie, were of opinion that, even if the right of the pursuer to have the cause remitted to the Court of Session for jury trial had been taken away by section 14 of the Workmen's Compensation Act 1906, it had been restored by the Act of 1907. Lord Dunedin also expressed the opinion—and Lord Mackenzie concurred in his opinion—that section 14 of the Workmen's Compensation Act did not take away a father's right to appeal from the Sheriff Court to the Court of Session. His Lordship thought that section 13 was not introduced with reference to section 14, but that, on the assumption that it applied, it was not meant to make a right of appeal in an action at law depend upon a fact (*i.e.*, the fact of dependence) which would have to be inquired into antecedently, and which has no relevance to an action at law. He also said (1911 S.C. 817, at p. 820, 48 S.L.R. at 631)—"But the chief ground upon which I should have held that the right was not taken away is that the right of the father to sue is quite independent of any idea of workmen's compensation, and that therefore nothing but clear enactment could take that right away." Lord Johnston took a different view. After referring to the language of section 13 of the 1906 Act he continued—"Primarily this refers to com-

pensation under the Act. But when applied to section 14—unless 'workman' is to have a different meaning in section 14 from that which it has in the rest of the Act, which the context does not provide—then having regard to the terms of the 14th section and to those of the Employers' Liability Act 1880, compensation has, I think, a different and wider meaning, the result being that the restriction of removal and appeal to the Court of Session covers not merely actions raised by the workman himself, but those raised by the specified relations after his death."

The House of Lords affirmed the Court of Session upon the ground that the right of appeal, if taken away by the earlier Act, had been restored by the latter Act. There is, therefore, no decision of that House upon the effect of sections 13 and 14 of the Workmen's Compensation Act on the right of a father to appeal an action of damages by him for his son's death. At the same time this question was discussed by the different Judges who took part in the decision. The Lord Chancellor said—"Upon this subject I agree with the reasoning of Lord Johnston. Taking sections 13 and 14 together of the Workmen's Compensation Act 1906, it seems to me that removal and appeal to the Court of Session are barred (save on a question of law) not only where the action is raised by the workman himself, but also where it is raised by his legal personal representative or his dependants or other persons to whom or for whose benefit compensation is payable. No doubt this is expressed awkwardly by a mere definition clause, and in view of the contrary opinion expressed by the Lord President I cannot say it is free from doubt. I feel that this view leaves anomalies, and may make the right to appeal turn upon the dependency of a father upon a deceased son, which may be a disputed fact and may be irrelevant to the action, as pointed out by the Lord President. But I think, upon the whole, that these sections have the effect described by Lord Johnston, though I do not desire to rest my conclusion upon that ground." Lord Atkinson, although not expressing a final opinion upon the question, said that undoubtedly the inclination of his opinion was that section 14 of the Workmen's Compensation Act was meant to deal with all actions under that Act, and that therefore the word "workman" must get the extended meaning put upon it by the definition clause. Lord Gorell, though with considerable doubt, took a different view, but Lord Shaw agreed with the Lord Chancellor.

By the recent Sheriff Courts (Scotland) Act 1913 (2 and 3 George V, cap. 28), First Schedule, amending the Sheriff Courts Act 1907, it is provided that the word "employee" in the amended Act includes the legal personal representative of an employee and any person who by the law of Scotland may be entitled to solatium in respect of the death of an employee. The effect of this provision when read into section 30 of the Sheriff Courts Act 1907 is to take away from a pursuer who has a claim against the employer of a deceased relative the right of appeal to the Court of Session, and

under section 31 of that Act to give him a right to jury trial in the Sheriff Court. The present case was raised before the 1913 Act was passed, and is consequently not affected by its provisions. At the same time nothing is said in the Act about the effect of sections 13 and 14 of the Workmen's Compensation Act, but I think that it manifestly proceeds upon the assumption that the view expressed by the Lord Chancellor in the case of *Lawrie* as to the effect of those sections is well founded. I confess that I was inclined to sustain the appellant's appeal, as the respondents have already without challenge had the benefit

of an incompetent appeal, but I have not been able to discover any legal ground upon which I could give effect to this view.

The LORD JUSTICE-CLERK was absent.

The Court held that the appeal was incompetent.

Counsel for the Appellant (Pursuer)—  
Moncrieff—Fenton. Agents—Ross & Ross,  
S.S.C.

Counsel for the Respondents (Defenders)  
—Horne, K.C.—Aitchison. Agent—Robert  
Miller, S.S.C.