

The Court answered the question of law in the affirmative.

Counsel for the Appellants—D. P. Fleming, K.C.—Patrick. Agents—Fyfe, Ireland, & Company, W.S.

Counsel for the Respondent—Lord Advocate (Macmillan, K.C.)—Skelton. Agent—Stair A. Gillon, Solicitor of Inland Revenue.

Friday, July 18.

FIRST DIVISION.

[Sheriff Court at Glasgow.

BROWN v. CAMPBELL.

Process — Sheriff — Removal to Court of Session for Jury Trial — Remit to Sheriff — Small Value of Cause — Averments — Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sec. 30.

An action raised in the Sheriff Court concluding for £300 as damages for personal injury having been remitted to the Court of Session for jury trial under section 30 of the Sheriff Courts (Scotland) Act 1907, the Court remitted the case back to the Sheriff-Substitute as unsuitable for jury trial in respect that the averments did not disclose a claim which could reasonably be entitled to a verdict of more than £50.

The Sheriff Courts (Scotland) Act 1907, section 30, which provides for the removal to the Court of Session for jury trial of cases originating in the Sheriff Court where the claim is in amount or value above £50 contains this proviso—“Provided, however, that the Court of Session shall if it thinks the case unsuitable for jury trial have power to remit the case back to the Sheriff. . . .”

John Brown, 50 M’Nair Street, Glasgow, with consent of his father, *pursuer*, brought an action in the Sheriff Court at Glasgow against Adam Campbell, 51 Mill Street, Glasgow, *defender*, for payment of £300 as damages for personal injuries.

The pursuer averred, *inter alia*—“(Cond. 2) On or about 10th January 1924 the pursuer was in the employment of Messrs James Reid & Company, firewood merchants, 56 M’Nair Street, Shettleston, Glasgow, as a lorryman on a horse-drawn lorry. (Cond. 3) About 5 p.m. of that day the pursuer was driving his horse and lorry westwards along Shettleston Road, Shettleston, Glasgow. When near Culross Street, which is a side street off Shettleston Road, the pursuer’s lorry was suddenly and without warning struck on the rear end by a heavy motor lorry, No. G.A. 7236, owned and at the time driven by the defender which was proceeding in the same direction as the horse and lorry driven by pursuer. (Cond. 4) As a result of the collision the pursuer was thrown from his lorry and rendered unconscious. He was at once medically attended to and was thereafter taken home. It was then found that his head was injured front and back, his face

being swollen and bruised and cut. His body and legs were bruised, and he sustained a severe shock to his nervous system and slight concussion.”

The Sheriff-Substitute (BLAIR) having allowed a proof the pursuer required the cause to be remitted to the Court of Session for jury trial in terms of section 30 of the Sheriff Courts (Scotland) Act 1907.

When the case appeared in the Single Bills the defender moved that the case should be remitted back to the Sheriff as unsuitable for jury trial in respect it was clear from the averments that no reasonable jury could award the pursuer £50 of damages—*Monaghan v. United Co-operative Baking Society, Limited*, 1917 S.C. 12, 54 S.L.R. 211; *Greer v. Corporation of Glasgow*, 1915 S.C. 171, 52 S.L.R. 109.

Argued for pursuer—Defender had tendered £40 which amounted to an admission that the injuries were not trivial. Pursuer’s averments if proved would justify an award of more than £50—*Duffy v. Young*, 7 F. 30, 42 S.L.R. 40; *Sharples v. Yuill & Company*, 7 F. 657, 42 S.L.R. 538; *Greer v. Corporation of Glasgow (cit.)*, per Lord Skerrington at 174.

At advising—

LORD SKERRINGTON — Lord Dunedin’s observations in the case of *Sharples v. Yuill & Company* (1905, 7 F. 657) in regard to appeal for jury trial are in my judgment applicable *mutatis mutandis* to the removal of causes for jury trial in terms of section 30 of the Sheriff Courts (Scotland) Act 1907. In particular, in deciding whether a case is or is not suitable for jury trial as regards the amount involved, the Court ought, I think, to “be guided by the standard fixed by the Legislature, viz., £40 [now £50], so that unless the action on the face of it discloses a claim which in the opinion of the Court could not reasonably be entitled to a verdict amounting to more than £40 [now £50], it will not refuse a jury trial to an otherwise appropriate case.”

It is in my opinion adding nothing new to Lord Dunedin’s criterion, but, on the contrary, merely interpreting it and carrying it into effect, to say that if a pursuer unreasonably refrains from giving information in his pleadings in regard to the nature and extent of his injuries so as to leave it doubtful whether a verdict for more than £50 would or would not be legitimate, his claim should be regarded as one which so far as its amount is concerned is of a trifling character and not suitable for jury trial. Thus in the present case every word in condensation 4 might be depone to as true by the most eminent physician and surgeon in Glasgow who, I shall suppose, happened to be an eye-witness of the accident and immediately attended to the pursuer. He might explain, however, that the visible injuries to the head and legs were trifling and would leave no mark, but that the shock was a serious one and accompanied by slight concussion as averred. He might then add that for twenty-four hours it remained doubtful whether the effects of the accident would be serious or trifling,

but at the end of that time it became apparent that in another twenty-four hours the pursuer would be completely and permanently recovered and as well in every respect as he had been before the accident, and that this prognosis which he made at the time had been in every respect confirmed by the history of the case during the three months which intervened between the accident and the raising of the action, and during the further period up to the date of the trial. Why should a pursuer be entitled to a jury trial as a reward for suppressing facts within his own knowledge which if disclosed would have entirely altered the complexion of the facts averred? On the other hand, if the pursuer had averred that although he had not lost more than a couple of days' work and wages, he had during the three months since the accident exhibited certain symptoms which he had been advised indicated that the effects of the accident might be serious and permanent, I should have thought that the action was one in which the Court might have had a difficulty in refusing a jury trial. As matters stand, however, I think that the case should go back to the Sheriff.

The LORD PRESIDENT (CLYDE), LORD CULLEN, and LORD SANDS concurred.

The Court remitted the cause back to the Sheriff-Substitute.

Counsel for the Pursuer—Garson. Agent—W. A. Farquharson, S.S.C.

Counsel for the Defender—Gilchrist. Agents—Manson & Turner Macfarlane, W.S.

Friday, July 18.

FIRST DIVISION.

[Lord Morison, Ordinary.]

PERTH GENERAL STATION COMMITTEE v. STEWART.

Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (4)—Common Law Action—Motion to Fix Compensation—Timeousness—Reduction of Award—Competency—Bar.

In an action in the Sheriff Court at the instance of a workman against his employers for damages at common law for injuries sustained by him while in their employment, the defenders were assoltized with expenses. No motion was made by the pursuer to have compensation under the Workmen's Compensation Act assessed until after the case had been disposed of, nor did the interlocutor assoltizing the defenders contain any finding or reservation as to their liability to pay compensation under the Act. Before, however, decree for the taxed amount of the defender's expenses had been pronounced the pursuer moved the Court (the defenders opposing the motion), in terms of section 1 (4) of the Act, to assess com-

penensation, and the Sheriff-Substitute thereafter made an award of compensation in the pursuer's favour. The employers—a Stated Case obtained by them on appeal having been dismissed as incompetent—brought an action of reduction of the award of compensation. Held (1) that the award was *ultra vires* in respect that the motion to the Sheriff to assess compensation had not been made until after the action of damages had been disposed of by final judgment, and (2) that the employers were not barred *personaliter exceptione* from reducing the award, and decree of reduction granted.

The Workmen's Compensation Act 1906, sec. 1 (4) enacts—"If within the time hereinafter in this Act limited for taking proceedings an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which in its judgment have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this sub-section when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act."

The Perth General Station Committee, incorporated by Act of Parliament, *pursuers*, brought an action against James Stewart, labourer, Perth, *defender*, concluding for the reduction of certain interlocutors pronounced by the Sheriff-Substitute and the Sheriff of Perthshire between 1st July 1921 and 10th August 1922 in an action at the instance of the defender for damages at common law resulting from an accident which happened to him while in the employment of the pursuers.

The following narrative is taken from the opinion (*infra*) of the Lord Ordinary:—"There has been a very unfortunate series of litigations between these parties, which is all the more regrettable in that the sum involved in the merits of the dispute is altogether out of proportion to the legal expenses which have been incurred. The facts which are material to the decision of this action of reduction are not in dispute. On the 30th June 1919 the defender met with an accident in the course of his employment with the pursuers. They paid him two weeks' compensation, equivalent in amount to that which he might have claimed under the Workmen's Compensation Act, and then ceased the payments. On 12th July 1920 the defender raised an action at common law in the Sheriff Court at Perth against the pursuers to recover a sum of £200 damages on the