

I agree with him on the grounds which he states, that the pursuers are bound to deduct from the valuation of the County the valuation of those parts of the Lower Ward which were taken from the County and annexed by the City of Glasgow Acts 1891 and 1896.

The Court pronounced the following interlocutor:—

“Recal the said interlocutor reclaimed against: Find that the pursuers in ascertaining the amount for which they are authorised to charge and assess the defenders the County Council of the County of Lanark, in terms of the 13th section of the Glasgow Court Houses Act 1890, are bound to take into account the valuation for the year ending on the 15th day of May 1890 of the lands and heritages within the whole County of Lanark: And further that the pursuers are bound to deduct from the said valuation and to add to that of the City of Glasgow the valuation of those parts of the said County annexed to the City by the City of Glasgow Acts 1891 and 1896: Remit the cause to the said Lord Ordinary to proceed therein.”

Counsel for the Pursuers—Sol.-Gen. Dickson, Q.C.—Younger, Agents—Webster, Will, & Company, S.S.C.

Counsel for the Defenders—H. Johnston, Q.C.—Cook, Agents—Bruce, Kerr, & Burns, W.S.

Thursday, November 22.

## SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

**DORNAN v. JAMES ALLAN SENIOR & SON.**

*Reparation—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37)—Agreement—Settlement of Claim—Injury not Resulting in Death—Discharge—Essential Error.*

In an arbitration upon a claim for compensation under the Workmen's Compensation Act 1897 between a workman and his employers, the employers pleaded that the workman had discharged his claim. The workman was injured in the course of his employment on 29th August 1899. On 27th September his employers' foreman called on him and presented to him a receipt bearing to be a final discharge of all claims competent to him against the firm in respect of the injury, and asked him to sign it in return for a payment of £2, 7s. 4d., being equivalent to four weeks' compensation under the Workmen's Compensation Act 1897, telling him that the employers' surgeon had reported that he would be fit for work in six weeks from the date of the accident,

or in about a fortnight from the date of the conversation. The workman read over the document, and without consulting his own doctor, signed the receipt and received the money. The employers' surgeon had in fact reported as stated by the foreman, and it was not alleged or proved that the foreman had made any other representation inducing the workman to sign the discharge. Both parties relied on the report in entering into the agreement, but it turned out to be erroneous, the workman remaining unfit for his usual work till 6th March 1900.

The Sheriff-Substitute awarded compensation, being of opinion that in entering into the agreement for settlement both parties were under such essential error as to render the discharge null and void.

A case for appeal having been stated at the instance of the employers, the Court (*diss.* Lord Young) recalled the award of the arbiter, and remitted to him to dismiss the claim, on the ground that the parties, although they had relied upon an opinion which ultimately proved to be erroneous, had not been in error as to any matter of fact at the time the discharge was signed.

In an application under the Workmen's Compensation Act 1897, by John Dornan, labourer, Glasgow, against James Allan senior & Son, ironfounders, Glasgow, the employers pleaded that the claim had been discharged, and produced a discharge which was signed by the claimant, and ran as follows:—“*N.B.—This is a final Discharge. No. 4727. Class B. I, John Dornan, 337 Garscube Road, Glasgow, do hereby acknowledge receipt of the sum of two pounds seven shillings and fourpence paid to me by Messrs James Allan senior & Son, ironfounders, Glasgow, in full satisfaction and discharge of any claim competent to me in consequence of personal injury sustained by me on or about 29th August 1899 in the course of my employment with the said firm.*”

The Sheriff-Substitute (GUTHRIE) repelled this defence, and awarded compensation to the claimant at the rate of 11s. 10d. a-week from 12th September 1899 till 6th March 1900, less £2, 7s. 4d. paid to account in respect of the injuries received by him while in the employment of Messrs Allan on 29th August 1899. Against this decision James Allan senior & Sons appealed.

In the case stated for appeal at their instance the Sheriff-Substitute found the following facts to have been admitted or proved—“(1) That the respondent was hurt in the course of his employment in the appellants' works in Possil Road, Glasgow, on 29th August 1899, and that notice of the injury was given on 15th September; (2) That the respondent signed the receipt and discharge (No. 3/1 of process) on 27th September 1899; (3) That the appellants' foreman, John M'Curker, on that day called for respondent, as he was in the

habit of doing, and presented to respondent the said receipt and discharge, and asked him to sign it, in return for a payment of £2, 7s. 4d., being equivalent to four weeks' compensation under the Act, telling him that Dr Mechan, surgeon of the Employers' Association, had reported that he would be fit to work in six weeks from the date of the accident, that is to say, in about a fortnight from the date of the conversation; (4) That the respondent did not, before signing the document, consult the surgeon (Dr Gunn) who attended at least once a week, as surgeon of the Friendly Society to which he (the respondent) belonged; (5) That the respondent read over the document and signed it, and received the money; (6) That Dr Mechan did report to the appellants as stated by M'Cusker to the respondent; (7) That it was not alleged or proved that any other representation inducing the respondent to sign the discharge was made by M'Cusker; (8) That Dr Mechan's report was erroneous, and the respondent was unfit for his usual work till 6th March 1900, a period four times as long as was indicated by Dr Mechan's report; (9) That both parties in entering into the agreement for the discharge relied on Dr Mechan's report; (10) That notice of 15th September was given to the appellants in due time, and that in any event the appellants in the circumstances suffered no detriment by delay; (11) That the respondent's average wages in the appellants' employ were 23s. 8d. a week."

The Sheriff-Substitute found in law that the discharge could not be set aside on the ground of error induced by misrepresentation of the appellants, but that both parties relied on Dr Mechan's report, and were under essential error, and that the discharge was void and null.

The question of law for the decision of the Court was—"Whether, in entering into the agreement for the settlement of respondent's claim for compensation, the facts and circumstances are sufficient to show that the parties were under essential error, to the effect of rendering the discharge in question null and void?"

Argued for the appellants—On the facts stated the Sheriff-Substitute should have come to a different conclusion. There was here no false misrepresentation or undue concealment of any kind. The findings of the Sheriff-Substitute excluded any idea of fraud. This was not a case of essential error. In order to constitute essential error so as to set aside a contract, (1) it was necessary that the error should go to the root of the contract; and (2) it must have been induced by misrepresentation—*Wood v. North British Railway Company*, July 2, 1891, 18 R. (H.L.) 27; *Mackie v. Strachan, Kinwood & Company*, July 15, 1896, 23 R. 1030; *Mathieson v. Hawthorns & Company, Limited*, January 27, 1899, 1 F. 468. A contract might also be set aside if there was no *consensus in idem* as regards its subject-matter—*Dickson v. Halbert*, February 17, 1854, 18 D. 586. But nothing of that kind occurred here. There was no misrepresentation or concealment. The

one party knew as much as the other. There was nothing to show that the doctor's report was not reliable. Both parties had relied upon this *bona fide* report of the doctor as a sound opinion. The report turned out to be erroneous, but at the time the contract was made there was no error as to existing facts. If the doctor had not made a report at all, and the appellants' foreman had told the respondent that he had, that would have been an error in fact. Here the only error was in the expectation of parties, and an error of opinion would never void a contract. A person might buy an investment on a broker's *bona fide* report submitted to him by the seller that its value would rise, but if the stock thereafter fell in value the investor would not get out of his engagement to buy by saying that he had depended on the broker's report. Reliance upon an opinion which turns out to be erroneous did not constitute essential error. The point argued by the other side as to the Sheriff having no power to deal with a case of this kind was not raised in the present case, and was now brought forward for the first time. The Court could pronounce a decision only on the question of law adjusted by the Sheriff, and would not send back the case in order to enable the respondent to raise a new question which had not been suggested when the case was before the Sheriff—*Rae v. Fraser*, June 28, 1899, 1 F. 1017.

Argued for the claimant and respondent—Under schedule 1, sections (13) and (14) of the Act, the employee was not allowed to assign away his right to a weekly payment until after a lapse of six months, and the employer could only settle for a lump sum after the expiry of the six months. The present discharge was therefore in contravention of the provisions of the Act, and section 1, sub-section (3), gave the Sheriff no power to deal with the matter. The Court should therefore send the case back to the Sheriff to proceed with the arbitration as if no such discharge had been granted. On the assumption that the matter had been competently dealt with by the Sheriff-Substitute, his judgment was right. He had, indeed, found it proved that there was no misrepresentation, but he had also found that the parties had acted under a common error as to a matter not of opinion but of fact. The circumstances showed that the parties had entered into the contract on the footing that the claimant would recover within six weeks. Instead of recovering within six weeks he had taken six months to recover. The error was therefore essential. The fact that recovery was to be made within six weeks formed the basis of the contract. It was an essential error, both parties entering into the agreement on an assumption which turned out to be erroneous. This erroneous belief as to a matter of fact invalidated the contract—*Purdon v. Rowat's Trustees*, December 19, 1856, 19 D. 206; *Mercer v. Anstruther's Trustees*, March 6, 1871, 9 Macph. 618; opinion of Lord Ardmillan, 649; *Menzies v. Menzies*, March 17, 1893, 20 R. (H.L.) 108, opinion of Lord Watson, 142.

At advising—

LORD JUSTICE-CLERK—The question in this case put by the Sheriff is—[*His Lordship read the question*]. I am of opinion that the question must be answered in the negative. The essential error is said to have been that the parties in settling the claim of the pursuer against the defenders, proceeded upon the opinion of a doctor who thought that the pursuer would be free from total disablement in three weeks, whereas in the event he was disabled for a much longer time. It is not the fact that by any act of the defenders, or any person acting for them, any misrepresentation was made to the pursuer. The Sheriff's findings entirely negative any such idea. What was represented to him was true, viz., that the doctor was of a certain opinion. I cannot hold that where a doctor gives an opinion on which parties act in compromising a case for a certain sum, that the fact that his opinion proves to be erroneous entitles a party to set aside the settlement made on the ground of essential error. I am unable to see any distinction between this case and the case of *Wood*, in which it was decided in the House of Lords that if a party compromised a case and took a sum of money as compensation for a bodily injury, acting on medical opinion given at the time, the injured party could not get over the settlement and obtain a judgment for a larger sum because it proved that his recovery did not take place for a considerable time, and his actual loss from the accident proved to be greater than was anticipated at the time of the settlement.

I therefore am of opinion that the question must be answered in the negative.

LORD YOUNG—I regard this as a case of very considerable importance. The statute on which the case is submitted to us is one about which there is a variety of opinions. But its object is plainly that where a workman or labourer, such as the respondent, without any serious or wilful misconduct receives an injury in the course of an employment attended with danger, he shall be entitled to receive such a sum from his employer as will keep him from starving and off the poor roll. The Legislature regards such an accident as a risk incident to trade, and which accordingly must be taken by the persons engaging in it. The respondent has brought the matter before the Sheriff by means of arbitration under the Act, on the ground that he had sustained an injury which incapacitated him from work. It does not appear to me from the facts in the case that there was any difference between the parties needing to be compromised. There was no room for compromise. Parties are agreed as to the fact that at the time the agreement was entered into the respondent was injured so as to be incapacitated for work. This is not a matter of dispute, and it occurs to me that the present case is not one of compromise in the sense that there was a dispute between the parties to be settled by a compromise. In the observa-

tions which I have to make, it must be distinctly understood that I do not question the view that if an honest agreement is entered into between different parties it will not be set aside because it turns out more favourable to one of the parties than was expected. But in dealing with such a discharge as the present, attention must be paid to the whole circumstances of the case. Thus in the case of *Wood* Lord Selborne commences his opinion by referring to facts to show that the party injured was, when he granted the receipt, in a condition to exercise an independent judgment. Here one of the material circumstances of the case is that the person from whom this receipt was taken was a working man admittedly suffering under the effects of an injury incapacitating him totally from work. The findings of the Sheriff-Substitute show that the respondent was hurt in the course of his employment on 29th August 1899 so as to be unfit for his usual work till 6th March 1900, and the terms of the receipt which has been presented by the appellants show that they were well aware when they presented the receipt to the respondent for signature that this workman was incapacitated for work as the result of the accident, and was therefore entitled every week to half a week's wages as long as he remained incapacitated. The respondent was entitled to a weekly payment as from 12th September, and as the receipt was taken upon 27th September he was at that date to the knowledge of the appellants entitled to compensation for a fortnight. On that day the employers' foreman presented this suffering labourer with a receipt headed, "This is a final discharge," and induced him to sign it in return for £2, 7s. 4d., being four weeks' compensation under the Act, telling him that Dr Mehan, the appellants' surgeon, had reported that he would be fit for work in a fortnight. I should have thought that what would have occurred to anyone intending to do justice would be to pay this workman the compensation to which he was entitled for the past fortnight, and continue to make payment of weekly compensation for another fortnight. Then, if the doctor's opinion had been right, the payments would have stopped. Justice would then have been done, and I think that this was the reasonable course to take. Was it a case in which good sense or justice suggested an idea of compromise? There was no difference or dispute to be compromised, and no consideration was given to the workman. Was it conscionable to think that no further payment than that mentioned in the receipt was to be made if the incapacity for work continued longer than the doctor certified that it would?

I do not impute falsehood to the appellants. I take the Sheriff's opinion that they honestly believed that their workman's incapacity for work through the injury would end in a fortnight, but I think it was neither conscionable nor proper for them to take this discharge with the intention of depriving their workman of

further compensation in the event of his disability continuing as it did for six months. Such action subverts the purpose for which the statute was passed, viz., to prevent the workman from requiring to go to the poor house or suffering starvation. Suppose the doctor, after the receipt had been signed, had come to the appellants and said, "I find I was mistaken when I made my report. The period of incapacity will be six months instead of three weeks." If the appellants had said in such a case, "That does not matter. We have got our receipt and we won't pay more." I do not think we would have countenanced such a reply as a legal position for them to take up, and I do not think any such result follows from the case of *Wood*. I am of opinion that there was here essential error on the part of both parties when they entered into this contract, and that there should be restitution. Every consideration of truth and honesty leads to restitution, so that this workman may receive the compensation which the statute intended he should receive. Therefore, in conformity with the views of the Sheriff-Substitute and those which I have added, I think this question should be answered as it has been answered by the Sheriff-Substitute.

LORD TRAYNER—The respondent in this case has put forward a claim against the appellants, his employers, and the defence is that the claim has been discharged. That defence was one which the Sheriff was bound to adjudicate upon, whatever might be the *species facti* on which it was founded. The discharge founded on by the defenders is produced and its genuineness is not disputed. That appears to me to be conclusive against the pursuer, unless he avers relevant grounds for setting the discharge aside. He now says that he signed the discharge under essential error, and that is his only ground of objection. But essential error, to form a ground of reduction, must be error induced by misrepresentation or undue concealment on the part of the person in whose favour the deed sought to be reduced was granted. The facts of this case as set forth by the Sheriff-Substitute negative any such misrepresentation or concealment by the appellants. I think, further, that neither of the parties to the discharge was under any essential error whatever in regard to any fact then existing and ascertained or ascertainable. They were equally informed. They both knew of the accident, of the claim advanced and made, of the probable duration of the incapacity for work, of the average earnings on which the compensation should be calculated. They, neither of them, knew, and could not know that the doctor's estimate of the time necessary for the respondent's recovery was understated, but they both believed the doctor, whose opinion was given in good faith. The parties were therefore under no error as to fact; they were both disappointed in their expectations, but that is not a ground for reduction. I think the case of *Wood* is quite in point, and it has been followed in several cases.

I cannot concur in the view on which the Sheriff-Substitute has proceeded that the discharge has to be set aside as ineffectual because of mutual error. Mutual error may be pleaded in support of the contention that there is no contract binding on the parties in respect that by reason of their mutual error they were never agreed *in idem*. But it is a novel view that mutual error as to the consequences which may follow from a contract will invalidate the contract itself. That is not error in regard to fact—it is error in opinion merely.

I regard this discharge as the outcome of a *bona fide* agreement between the parties to settle a claim regarding which one party knew as much as the other, and a discharge therefore not liable to be set aside, but one entitled to full effect. I am therefore for recalling the judgment of the Sheriff-Substitute, and remitting to him with directions to dismiss the respondent's application.

LORD MONCREIFF—The only question of law submitted is—[*His Lordship read the question*].

It is not competent for us to consider any other question, nor to remit to the Sheriff to state another. There is nothing in the Act to prevent an employer settling with his workman as was done here. The Act contemplates that employer and workman may agree not only as to liability under the Act but as to the amount and duration of the compensation. And if there is an agreement there can be no arbitration—See section 1 (3).

There is no question here of the *bona fides* of the appellants in accepting the discharge from the respondent, and we are not entitled to proceed on any view which we may take of their conduct in now insisting on it. On the question raised there is no doubt that in one sense both parties to this transaction were in error—that is to say, we must hold that they both expected that the workman would be able to return to work at the end of six weeks from the date of his accident, their reason for so thinking being that Dr Mehan, the medical man consulted by the employer, reported to that effect. But it does not follow that this was an error which went to the root of the contract. In order to succeed in reducing the discharge granted by the respondent, he must show that it was an implied condition of the contract that Dr Mehan's report should ultimately prove to be well founded—with this result, that if on the expiry of the six weeks from the date of the accident it were found that the respondent had not recovered, the discharge should be disregarded, and the respondent should be at liberty to claim compensation as if it had not been granted.

Now, I do not think that that is the true nature of this contract. I think that it was the respondent's intention to accept a lump sum in respect of the injuries which he had received, and that the report which was communicated to him was no more than a means to enable him to decide whether he should accept the appellants'

offer or not. The case was just the same as if each party had consulted their own medical man, and both doctors had agreed in saying that the workman would be fit for work in six weeks from the date of the accident. In that case both parties would have been under the same error as here, and would have entered into the contract on an erroneous assumption. But I cannot suppose that in such a case the error so induced would be held to be a sufficient ground for setting aside the contract. The fact is that in all such cases there is always an element of transaction or risk, however much the parties may be guided by the professional advice which they receive. There must be finality about such transactions, and it would never do if it could not be determined whether a discharge so granted was to hold good until it was seen whether the opinions upon which the parties acted were justified by experience or not.

If authority were required, it will be found in the case of *Wood* in the House of Lords, where the person injured was induced to accept compensation (which proved to be inadequate) on the faith of a report obtained by the railway company.

In short, I think that the error which undoubtedly existed here was not a fundamental error, although no doubt it influenced both parties in entering into the contract.

I will only add that the matter might be well tested by considering whether, if the respondent had proved to be fit for work in a day or two, the appellants could have recovered from him the excess of the compensation which they paid him. I think clearly not.

The Court answered the question of law in the negative, sustained the appeal, recalled the award of the arbitrator, and remitted to him to dismiss the claim.

Counsel for the Claimant and Respondent—Hunter—Munro. Agents—Sibbald & Mackenzie, W.S.

Counsel for the Respondents and Appellants—W. Campbell, Q.C.—Younger. Agents—Morton, Smart, & Macdonald, W.S.

Saturday, November 24.

## FIRST DIVISION.

[Sheriff Court at Edinburgh.]

### AITKEN & COMPANY v. PYPER.

*Obligation—Obligation to Pay Premiums on Policy “Effected”—Policy subsequently Effected—Cautionary or Primary—Obligation Granted to Employer of Agent—Endurance of Obligation—Cautioner.*

P. granted a written obligation to A. & Co. in the following terms—“Dear Sirs: I beg to state that I am willing and hereby agree to become security for the regular payment of the sum of

£4, 7s. st., being the annual premium on policy of assurance for £200, effected on T’s life.” . . . On the day after the granting of this obligation A. & Co. entered into an agreement with T., in which it was agreed that T. should act as agent for selling goods made by A. & Co., that he should give a bill and a life insurance policy with the premiums guaranteed as security, and that A. & Co. should advance him the sum of £200.

Thereafter a policy for £200 was taken out by T., and it was subsequently assigned by him to A. & Co. In an action at the instance of A. & Co. against P. for payment of sums disbursed by them in payment of premiums on this policy, the pursuers averred that on the faith of P.’s obligation they had advanced T. £200, that they had subsequently found it necessary to apply for sequestration of T.’s estate, and that they had paid premiums on the policy to the amount sued for. The defender maintained that the action was irrelevant, in respect (1) that the obligation referred to an existing policy, and that the policy in question had been effected subsequently to the date of the obligation; (2) that the obligation was *ex facie* of the document of a cautionary nature, and no breach of a primary obligation to pay the premiums had been averred; and (3) that the letter of obligation referred only to the contract of service between the pursuers and T., and was only good as long as he remained in their service, as a guarantee against misconduct. The defender did not aver that the pursuers’ interest in the policy had terminated.

Held that these objections were unfounded, and that the pursuers had stated a relevant case.

*Fraud—Misrepresentation—Duty to Disclose—Obligation Granted to Employer of Agent by Third Party—Misrepresentation by Agent—Concealment of State of Agent’s Account by Employer.*

In an action by the grantees against the granter of an obligation to pay the premiums on a policy of insurance effected on the life of an agent employed by the grantees, and assigned to them by their agent, held that it was not a relevant defence for the defender to aver (1) that he had been induced to grant the obligation by misrepresentations made by the third person “for himself and on behalf of the pursuers,” there being no averment that the misrepresentations alleged had been made by or with the authority or knowledge of the pursuers; or (2) that the pursuers had concealed from the defender the fact that the person for whom he gave the guarantee was in their debt at the time, there being no allegation that the pursuers had ever been questioned by the defender on this point, and no obligation upon