

whether the defenders were bound to provide for the unseen results of fire. I do not think that they were. It is said in condescendence 4 that the defective condition of the shed had been brought to the defenders' notice before the fire occurred. That seems to me rather an unlikely thing to have happened. It is not said that it had ever caught fire before, and it does not seem probable that the defenders should be called upon to remedy its construction in order to provide for the occurrence of an unlikely event. Even if they were, I do not think they were called upon to pay attention to such warnings, and I agree with the observations of Lord Trayner as to the pursuers' obligation to state when and by whom such warnings were given.

On the whole matter I think the pursuer has stated no relevant case.

LORD YOUNG was absent.

The Court dismissed the action.

Counsel for the Pursuer and Appellant—Campbell, K.C.—Younger. Agents—Oliphant & Murray, W.S.

Counsel for the Defenders and Respondents—Guy. Agents—Webster, Will, & Co., S.S.C.

Wednesday, July 15.

SECOND DIVISION.

[Sheriff-Substitute at Perth.]

HUSBAND v. P. & P. CAMPBELL.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), Workman Recovered from Injury—Loss of Finger—Right of Workman to Nominal Award to Preserve Claim in the Event of Supervening Incapacity.

A workman, a boy of seventeen, who was temporarily incapacitated by the loss of the third finger of his left hand in consequence of an injury sustained in his employers' factory, for a number of weeks received from his employers 8s. a-week, being the full sum which he would have earned had he been working. The employers having offered to receive the workman back, and the workman having promised to return, but not having done so, the employers ceased the payments. The workman then took work from a new employer, and thereafter claimed compensation under the Workmen's Compensation Act in respect of the loss of his finger, and instituted arbitration proceedings, in which he admitted that he was then able to do all his old work, and in which the Sheriff found that he could have done so and earned 8s. a-week before he entered his new employment; the Sheriff accordingly assoilized the respondents. In a case for appeal at the

instance of the workman, he maintained that he was entitled to such a declaration of the liability of his former employers as would preserve his rights in the event of supervening incapacity. The Court dismissed the appeal.

This was a case stated by the Sheriff-Substitute at Perth (SYM), in an arbitration under the Workmen's Compensation Act 1897 between Alexander Husband junior, New Row, Perth, claimant and appellant, and P. & P. Campbell, dyers, Perth, respondents.

The case stated, *inter alia*, as follows:—
“The applicant for compensation is a lad of seventeen years of age; for some time prior to July 31st 1902 he was employed in the works of Messrs P. & P. Campbell, dyers, Perth, the respondents, at boy's unskilled labour in assisting a dyer. The Workmen's Compensation Act 1897 applies to the employment in these dye works. The work in which the applicant was engaged was that of lifting parcels of goods about fourteen pounds weight and carrying them a short distance to the dyer for whom he worked; his wages were 8s. a-week. The applicant would not have risen above a labourer's position if kept on in the works. On the said 21st July the applicant was injured in the works by having his hand caught in a starching-machine, and in consequence the finger next the little finger of his left hand was severely crushed and torn, and had to be amputated. For the purposes of the arbitration the respondents admitted that the injury was one for which they are made liable in compensation under the Workmen's Compensation Act. For each week up to the week in which 13th October fell the respondents paid the applicant his full wages of 8s. per week which he would have earned had he been working. The respondents were willing to receive him back into their employment whenever he could return at safe work at the same wages of eight shillings. At 13th October they stopped the payments above referred to only after they had received his repeated promise to come back to work. The offer to receive him back was made in *bona fide*, because the respondents were aware that the applicant was playing about the streets. Eventually the applicant declined to return to the respondents' work, and in the beginning of November 1902 he took employment as message boy with a grocer at 6s. per week, which sum has since March 1903 been raised to seven shillings. Before that he had made no attempt to do work or to get work. This employment with a grocer does or may at any time require him to grasp or lift weights as heavy as or heavier than the bundles of goods which he had to lift in the respondents' works. The applicant's prospects and earning capacity appear, for aught proved, to be as good in the grocer's trade as in the trade of a dyer's labourer, to which he declines to return. He is now quite well though thinner than before the injury. Had he been kept on in the respondents' works and become a

labourer, he might when grown up have earned somewhat over twenty shillings per week. The applicant admits (as does also the medical man examined on his behalf) that he could now do all his old work although deprived of one finger, and I find that in fact he could have done it and have earned 8s. per week by 13th October 1902."

The Sheriff-Substitute assolizied the respondents, holding that the payments referred to exhausted their liability, and that it was unnecessary to make a declaration such as would keep the action in Court.

The question raised at the hearing of the appeal was whether the appellants was entitled to such a nominal award or declaration of the respondents' liability as would keep open any claim he might have in the event of supervening incapacity.

Argued for the appellant—Even if the appellant had sustained no loss the Sheriff would not have been justified in assolizieing the respondents, but should have made such a declaration of their liability as would have preserved the appellant's right to compensation in the event of his being incapacitated by any supervening effects of his injury—*Freeland v. Macfarlane, Lang, & Co.*, March 20, 1900, 2 F. 382, 37 S.L.R. 599; *Ferrier v. Gourlay Brothers*, March 18, 1902, 4 F. 711, 39 S.L.R. 453; *Irons v. Davis & Timmins*, (1899), 2 Q.B. 330.

The respondents were not called upon.

LORD JUSTICE-CLERK—I am unable to see any ground for this appeal. The injury to the appellant consisted in the loss of the finger next the little finger of his left hand. It seems to me that the amount of compensation which the injured person is entitled to recover on account of such an injury is a matter which can very well be held to be settled finally when the immediate effects of the injury have disappeared. I think that it would be out of the question to allow the matter to remain open on account of the possibility of further injurious effects being developed later on. If it had been the case of the loss of an eye, or of injury to an eye, or, as Lord Trayner suggested in the course of the argument, if it had been the case of injury to the head or anything likely to affect the nervous system—if it had been anything in short of a kind which does not infrequently develop its full effects until after the lapse of a considerable time, I think it may be quite right to award a nominal weekly sum so as to keep the matter open. This is not at all a case of that kind. The boy is now just as fit for his ordinary work as he ever was as far as one can judge. The work is not work of a delicate character, and the finger which has been lost is not a finger which is of importance in carrying on this work. I can see no ground whatever for this appeal, which I move your Lordships to dismiss.

LORD TRAYNER—I am of the same opinion. The rule which the statute lays down is that when the incapacity has ceased the compensation shall cease. That is the rule of the statute, but the courts

both here and in England have recognised an equitable exception in cases where the claimant has apparently recovered but his injury is of a character in which serious consequences may afterwards develop themselves. In cases of that kind the Court may keep the matter open by authorising a nominal award of compensation. I should be quite prepared to apply that exception in the present case if I thought that the circumstances warranted it. But it appears to me that the present case does not fall within the exception. The boy was injured on 21st July 1902, and he had completely recovered so as to be able to do all his former work, and earn his old wages, by 13th October following. There is no reason whatever to suppose that the loss of his finger will result in any permanent injury to his system. I think this is not a case of the sort to which the exception applies in which injurious consequences may reasonably be supposed as likely to supervene from the injury. I therefore agree with your Lordship.

LORD MONCREIFF—I am of the same opinion. The question to which the appellant's counsel addressed himself is not stated. But assuming that it is, there may be cases in which it is proper that the injured person's possible future claims should be reserved by making a nominal award of compensation so as to keep the matter open. But I think that such a reservation of possible claims should be sparingly allowed, because the effect of the reservation is to keep the case in Court hanging over the head of the employer it may be for years during which there is a risk of evidence being lost. In this case I see no reason for supposing that this boy will suffer in the future. His injury was a comparatively slight one, and now that it has healed his power of earning his livelihood has, I think, been completely and permanently restored to him.

LORD YOUNG was absent.

The Court dismissed the appeal.

Counsel for the Applicant and Appellant—Salvesen, K.C.—Munro. Agent—J. Campbell Irons, S.S.C.

Counsel for the Respondents—Spens. Agent—W. C. Dudgeon, W.S.