The Court recalled the interlocutor reclaimed against and dismissed the action.

Counsel for Defenders (Reclaimers) — Cullen, K.C. — A. Crawford. Agents — Campbell & Smith, S.S.C.

Counsel for Pursuer (Respondent) — Hunter, K.C.—Christie. Agents—Simpson & Marwick, W.S.

Friday, July 16.

FIRST DIVISION.

[Sheriff Court at Kirkcaldy.

ELLIS *v.* THE LOCHGELLY IRON AND COAL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1 (3) — *Arbiter — Sheriff — Jurisdiction — Discharge—"Any Question as to the Liability to Pay Compensation."*

In an appeal from an arbitration under the Workmen's Compensation Act 1906, the defenders founded on a discharge purporting to have been granted by the workman, and pleaded that the Sheriff, sitting as arbiter, was bound to apply it as such unless and until it was reduced by competent legal process.

Held that the question as to the validity of the discharge was a question "as to the liability to pay compensation" under section 1 (3) of the Act, and that the Sheriff sitting as arbiter could competently dispose of the same.

Contract — Discharge — Essential Error—Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58).

A workman entitled to compensation under the Workmen's Compensation Act 1906, signed a discharge which purported to be in full satisfaction of all claims past and future, in the belief that he was merely signing a receipt for compensation past due. His employers' cashier took the discharge in the belief that the workman had fully recovered, whereas he was still totally incapacitated. The Sheriff-Substitute awarded compensation, being of opinion that the workman was not barred from recovering compensation by the discharge. A case for appeal having been stated at the instance of the employers, *held* that there was no such clear error of law as to entitle the Court to interfere with the judgment of the Sheriff-Substitute.

Observations (*per* Lord President) on essential error not induced by the representations of the other parties.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), section 1 (3), enacts: -"If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act."

In an arbitration under the Workmen's Compensation Act 1906, in the Sheriff Court at Kirkcaldy, between Robert Ellis, miner, Lochgelly, and The Lochgelly Iron and Coal Company, Limited, the Sheriff-Substitute (SHENNAN) awarded Ellis compensation at the rate of 19s. per week from 29th May to 11th July 1908, under deduction of £2, 1s. 2d. paid, and at the rate of 6s. 6d. per week from 11th July 1908. The Lochgelly Iron and Coal Company, Limited, took a stated case for appeal.

The case gave the following *facts* as proved: — "(1) The respondent, while working in appellant's employment in their Newton Pit, Lochgelly, on 29th May 1908, sustained injuries from accident arising out of and in the course of his employment, in consequence of which he was totally incapacitated for work down to 11th July 1908. (2) Since 11th July 1908 the respondent has been partially incapacitated, owing chiefly to stiffness and pains in his back, but his condition is improving. His hearing was somewhat imperfect before the accident, and there are no objective signs of injury to his ears. (3) On Friday, 12th June 1908, the respondent went to the appellant's colliery office to receive his compensation, and was told to return on the Monday following. The respondent returned to the office on Monday, 15th June 1908, and received payment of £2, 1s. 2d., granting a discharge over a penny stamp which purported to be in full satisfaction of his claims past and future. A copy of the discharge, which was partly printed and partly written, is appended hereto in full, and forms part of this case. (4) The appellants' cashier, George Erskine, read over the receipt to the respondent, who also had the opportunity of reading it over for himself. The cashier took the receipt in the belief that the respondent had fully recovered. At that date the respondent was still totally incapacitated. (5) The respondent signed this discharge in the belief that it was merely a receipt for compensation past due. He did not intend to sign any document by which he was agreeing to claim no further compensation. He was not aware that this was the effect of the discharge until, about ten days later, he asked the cashier when his next payment of compensation was due. (6) The discharge was not registered in the Sheriff Court books at Kirkcaldy under section 10 of the Second Schedule of the Workmen's Compensation Act 1906. (7) The respondent's average weekly earnings prior to the accident are of consent taken to be 38s. Since 11th July 1908 the respondent's earning capacity may be fairly stated at 25s. per week."

On these facts the Sheriff-Substitute found in law—"(1) That respondent is entitled to recover compensation from the appellants; and (2) that he is not barred

from doing so by the discharge of 15th June 1908."

The *question of law* for the opinion of the Court was—"Did the respondent's signature of the appended document in the circumstances stated operate as a complete discharge of his claim for compensation against the appellants."

Argued for the defenders and appellants—(1) The Sheriff-Substitute had no right to go into the question as to whether the document operated as a discharge or not. He was bound to apply it as such unless and until reduced—*Niven* v. *Burgh of Ayr*, January 18, 1899, 1 F. 400, 36 S.L.R. 294; *Robertson* v. *S. Henderson & Sons, Limited*, June 2, 1904, 6 F. 770, 41 S.L.R. 597. In deciding that it did not operate as a discharge he no longer acted as arbiter. (2) A discharge granted by a workman under an error for which he alone was responsible, barred him from claiming further compensation. There was here no mutual error and no misrepresentation—*Stewart* v. *Kennedy*, March 10, 1890, 17 R. (H.L.) 25, 27 S.L.R. 469; *North British Railway Company* v. *Wood*, July 2, 1891, 18 R. (H.L.) 27, 28 S.L.R. 921; *Mathieson* v. *Hawthorns & Company, Limited*, January 27, 1899, 1 F. 468, 36 S.L.R. 356; *Dornan* v. *James Allan Senior & Son*, November 22, 1900, 3 F. 112, 38 S.L.R. 70; *The Provincial Homes Investment Company, Ltd.* v. *Laing*, 46 S.L.R. 616. The reference to section 10 of the Act by the Sheriff was a complete misapprehension. That section refers to the redemption of agreements for future compensation. The Sheriff's finding did not justify him from setting aside the discharge. Finding 5 was irrelevant in a case of mutual contract between persons of full age and capacity.

Argued for the pursuer and respondent—(1) The question as to the competency of the Sheriff dealing with the discharge, not having been raised before him, could not be raised now. The defenders went to proof on this point before the Sheriff, and elected to take his judgment on it as arbiter. But in any event sub-section 3 of section 1 of the Act applied to all questions as to liability under the statute, and here the question as to the validity of the discharge was a question of liability to pay compensation and within the Sheriff's jurisdiction. An analogous case was *Johnstone* v. *Spencer & Company*, 1908 S.C. 1015, 45 S.L.R. 802. (2) There was here such error *in essentialibus* as invalidated the consent given, because (*a*) it was an error as to the nature of the contract; (*b*) it was essential error induced by the misrepresentation of defenders—Bell's Prin. 11; *Selkirk* v. *Ferguson*, 1908 S.C. 26, 45 S.L.R. 19; *M'Donagh* v. *P. & W. MacLellan*, June 18, 1886, 13 R. 1000, 23 S.L.R. 717; *Fowler* v. *Hughes*, January 23, 1893, 5 F. 394, 40 S.L.R. 321; *Watkins* v. *Rymill*, 10 Q.B.D. 178. Pursuer was within the third exception mentioned by Mr Justice Stephen in this case, p. 189.

At advising—

LORD PRESIDENT—The facts as set forth by the learned Sheriff-Substitute in this stated case, after mentioning the accident which happened in which the respondent was injured, are, that on a certain date "the respondent went to the appellants' colliery office to receive his compensation, and was told to return on the Monday following." He went to the office on that day, and then he says that the appellants' cashier "read over the receipt to the respondent, who also had the opportunity of reading it over for himself. The cashier took the receipt in the belief that the respondent had fully recovered. At that date the respondent was still totally incapacitated. The respondent signed this discharge in the belief that it was merely a receipt for compensation past due." Then, after finding that his weekly earnings were so much, he says—"I found in law (1) that respondent is entitled to recover compensation from the appellants; and (2) that he is not barred from doing so by the discharge of 15th June 1908."

The first point which was argued to us by the appellants—the employers—was that the Sheriff-Substitute had no right to go into the question of whether this document operated as a discharge or not, but that he was absolutely bound to take it as a discharge—to apply it as a discharge unless and until it had been reduced in a competent court of law. I do not think that this is a sound contention, because I think it goes against the wording of the Act. The wording of the Act is—sub-section 3 of section 1—"If any question arises in any proceedings under this Act as to the liability to pay compensation . . . or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration." Now, I think that this is clearly a question arising in proceedings as to the liability to pay compensation, because the liability, of course, includes the non-liability, and the non-liability is said to arise in respect of this discharge, and this discharge alone. Accordingly, I think that the Sheriff-Substitute was acting entirely within his jurisdiction in settling the question as to whether this document which was put forward operated as a discharge or did not.

While that is so, of course if in holding that it did not operate as a discharge he did so upon a legal ground which was wrong, that is open to review. I do not think that the appellants here are in a position to show that he necessarily went upon a legal ground that was wrong. I do not think it necessary in this case to go into the somewhat difficult question of how far there may be, in certain instances, relief from a contract on the ground of essential error not induced by the representations of the other parties. That there may be some cases of that sort is, I think, fairly evident from the opening words of Lord Watson in the House of Lords in the well-known case of *Stewart* v. *Kennedy*, March 10, 1890, 17 R. (H.L.) 25. On the other hand, I think

the cases are few and far between. But one of them, I think, must be a case where the real error in the person's mind is not as to the true legal effect of the document which he has signed—a case in which I have no doubt the error must be induced by the opposite party, and in which it is not enough simply to say that there was error in his own mind—but a case where there is actual error as to the *corpus* of the document which is being signed at the time. A case is put by Professor Bell where a person is thinking he is signing one thing while he is in fact signing another.

Now these two things often run very much into each other. To say you are in error as to what you are signing would be, in ordinary language, very often quite a usual way of saying no more than that you had a wrong impression as to the true legal effect of what you are signing. On the other hand, there are cases easy to figure where there is no question of doubt as to the legal effect, but where the real doubt is as to the actual *corpus* of the document that you are signing, Suppose that by chance you thought you were signing a visitors' book, and you were really signing a cheque-book innocently covered up by somebody else, do you suppose that anybody would be entitled to take that cheque-book and use it, and then say that unless you could show that he had induced the error you could not get rid of the cheque? Now here, in this case, looking at this document, it is just one of those cases which may be rather difficult to assign to the one category or the other—that is to say, it may be rather difficult to say whether the error truly consisted in a misapprehension as to what the document consisted of, or a misapprehension as to whether the class of document put before the man was one thing or another.

The Sheriff-Substitute had the whole facts before him, and he has found facts enough to make it possible for him, sitting as a jury, to come to the conclusion either that there was an actual error as to the *corpus*, or, indeed, more, that the error, such as it was, was induced by the action of the appellants through their cashier. It is a very pregnant finding that the cashier took the receipt in the belief that the respondent had fully recovered. That belief would make him, in perfectly good faith, offer to the other party for his signature a document as and for a total discharge and not a receipt for weekly payment, and yet all the time the other man might be thinking it was a receipt for weekly payment, and the error, such as it was, might be induced by the action of the cashier.

Accordingly, it seems to me that here there is no such clear error of law in the result at which the Sheriff-Substitute has arrived, as evidenced by the findings of fact which he has put before us, as to entitle us to interfere with his judgment. Accordingly, I think that the decision of the Sheriff-Substitute should be upheld.

LORD KINNEAR—I concur.

LORD PEARSON—I concur.

The Court answered the question of law in the negative, and affirmed the award of the arbitrator.

Counsel for the Pursuer and Respondent—T. B. Morison, K.C.—Munro. Agent—D. R. Tullo, S.S.C.

Counsel for Defenders and Appellants—Hunter, K.C.—Strain. Agents—W. & J. Burness, W.S.

Friday, July 16.

FIRST DIVISION.

[Lord Johnston, Ordinary.

REILLY *v.* GREENFIELD COAL AND BRICK COMPANY, LIMITED.

Reparation—Negligence—Duty to Public—Dangerous Machine—Children—Degree of Danger—Road in Use by Public Crossed by Miners' Hutches—Machine in Motion not Subject to Control.

A father brought an action against a colliery company, mineral tenants of the subjects, for damages for the death of his son, aged about four years, who was killed by one of a series of miners' hutches running on a tram line at a point where it crossed a cart road. The road in question had been used by the public from at least the time the tram line was made, down to the date of the accident, fourteen years later. The tram line was a double line, about six feet wide, worked by an endless wire rope with hutches attached at intervals of forty yards kept going more or less continuously at a rate of a little over three miles an hour. The line was unfenced and crossed the road on the level, the tram rails and the wire rope being sunk between the sleepers, the rope rising only a couple of inches as the hutches passed.

Held (*aff.* judgment of Lord Johnston, Ordinary) (1) that as the hutches where they crossed the road were not under the direct control of anyone, but travelled, so to speak, automatically, the tramway might be considered a dangerous machine placing the defenders under duty to the public to take precautions against its injuring anyone; (2) that whether the use of the road by the public was of right or merely by tolerance did not therefore affect the case; and (3) that as the defenders had taken no precautions they were liable in damages.

Authorities reviewed and explained.

On 24th April 1908 Charles Reilly, miner, Shettleston, brought an action against the Greenfield Coal and Brick Company, Limited, Greenfield Colliery, Shettleston, for £500 as damages for the death of his son,