

determination of the Sheriff-Substitute as arbitrator appealed against: Remit to him to determine whether on 13th April 1908 the pursuer's earning capacity was the same as or less than it would have been had he not been injured by the accident founded on, and to proceed as accords, and decern: Reserve all questions of the expenses of the stated case on appeal, with power to either of the parties to move this Court after the arbitrator has determined the matter above remitted to him."

Counsel for the Appellants—Horne—Strain. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Watt, K.C.—Wilton. Agent—D. R. Tullo, S.S.C.

Tuesday, March 8.

### FIRST DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Dumbarton.]

**PATERSON AND ANOTHER v.  
WILLIAM BEARDMORE & COMPANY,  
LIMITED.**

*Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Second Schedule 17 (b)—Process—Stated Case—Certificate of Refusal—A.S., 26th June 1907, sec. 17 (c) and (h).*

A certificate of refusal to state a case for appeal under the Workmen's Compensation Act 1906 must be written on a separate paper and not on the interlocutor sheet in the arbitration process.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Sched. ii, sec. 17 (b), enacts—"Any application to the Sheriff as arbitrator shall be heard, tried, and determined summarily . . . subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by Act of Sederunt to require the Sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either Division of the Court of Session. . . ."

The Act of Sederunt, 26th June 1907, section 17, enacts—"The following regulations shall apply to cases to be stated by a Sheriff in virtue of the provision contained in paragraph 17 (b) of the second schedule appended to the Act. . . . (c) Should the parties or their agents fail to agree as to the terms of the case, these shall be settled by the Sheriff, provided always that if the Sheriff on a draft case being submitted to him is of opinion that any question of law stated in it was not raised by the admissions made or the facts proved before him, or that the application for a case is frivolous, he may refuse to state or sign the case, but in that event he shall grant to the applicant a certificate specifying the cause,

and bearing the date, of the refusal. . . . (h) When a Sheriff has refused to state and sign a case, the applicant for the case may, within seven days from the date of such refusal, apply by a written note to one of the Divisions of the Court of Session for an order upon the other party or parties to show cause why a case should not be stated. Such note . . . shall be accompanied by the above-mentioned certificate of refusal, and shall state shortly the nature of the cause, the facts, and the question or questions of law which the applicant desires to raise. . . ."

On 8th March 1910 William Paterson, apprentice joiner, Greenfield Street, Govan, and another, presented a note to the First Division for an order on the respondents William Beardmore & Company, Limited, shipbuilders and engineers, Dalmuir, to show cause why a case should not be stated in an arbitration under the Workmen's Compensation Act 1906 raised at the company's instance against the petitioners. The note stated that the appellants, on 27th December 1909, craved the Sheriff-Substitute (BLAIR) at Dumbarton, acting as arbiter, to state a case for the First Division of the Court of Session; that on 20th January 1910 the Sheriff-Substitute refused to state a case; that the appellants duly applied for a certificate of refusal to the Sheriff-Clerk, but that no such certificate had been issued?

Counsel for appellants stated that they had been unable to obtain the usual certificate of refusal owing to its having been written on the interlocutor sheet in the arbitration process, and that accordingly they had been unable to lodge it along with the present note. In these circumstances he craved the Court to hold a copy of the Sheriff's interlocutor as equivalent to a certificate of refusal, and to pronounce the usual order.

LORD PRESIDENT—In this case the respondents, in an application under the Workmen's Compensation Act for review of compensation which was being paid by an employer to a workman, upon a certain judgment being pronounced by the Sheriff acting as arbitrator, applied to the Sheriff to state a case on what they considered to be an erroneous decision on a point of law. The Sheriff decided that the facts were not such as entitled him to state a case.

The Sheriff's duty in that matter is regulated by the 17th section of the Act of Sederunt of 26th June 1907, which provides—" (c) Should the parties or their agents fail to agree as to the terms of the case, these shall be settled by the Sheriff, provided always that if the Sheriff, on a draft case being submitted to him, is of opinion that any question of law stated in it was not raised by the admissions made or the facts proved before him,"—I may remark in passing that this provision also applies where there is no room for stating a case at all,— "he may refuse to state or sign the case, but in that event he shall grant to the applicant a certificate specifying the cause and bearing the date of the refusal." It is

further provided by the Act of Sederunt (section 17 (h)) that the appellant, having that certificate in his hand for the information of the Court as to why a stated case was refused, may come here and state to the Court the class of case he wishes to have stated, and ask for an order on the other party to show cause why a case should not be stated.

The Sheriff refused to state a case, but embodied that refusal in the interlocutor which he pronounced, so there is no other record of his refusal than the interlocutor sheet, and the interlocutor sheet, of course, could not be sent to this Court. The appellant now comes to this Court and says that he cannot comply with the rules of the Act of Sederunt, as the Sheriff refused to give him a separate certificate which he could produce, and he asks the Court to deal with his application in the condition in which we find it.

I think it as well to go into this matter, because I look on what has happened as the result of a mere misunderstanding of the meaning of the Act of Sederunt. I think the Sheriff only wished to do as the Act of Sederunt directed; but it will be seen that what he did was practically useless, as his interlocutor could not be taken away, and it is therefore necessary that he should write his certificate, stating the reasons of his refusal on a separate paper, which can be taken away and shown to this Court.

It is unnecessary to multiply procedure, and as we have here a copy of the Sheriff's interlocutor, I propose that in this case we should make the usual order on the other party to show cause, and should allow the appellant to lodge simply a copy of what the Sheriff has written on the interlocutor sheet.

LORD DUNDAS and LORD JOHNSTON concurred.

LORD M'LAREN and LORD KINNEAR were absent.

The Court pronounced this interlocutor—

“Appoint the note to be intimated to the respondents, and allow them; if so advised, to lodge answers within eight days after such intimation; allow the appellant to lodge in process, instead of a certificate of refusal to state a case by the arbitrator as required by subsection (c) of section 17 of the Act of Sederunt dated 26th June 1907, a copy of the arbitrator's refusal to state a case as contained in his interlocutor.”

Counsel for Appellants—J. A. Christie.  
Agents—St Clair Swanson & Manson,  
W.S.

Wednesday, March 9.

SECOND DIVISION.

[Lord Johnston and a Jury.

MITCHELL v. CALEDONIAN  
RAILWAY COMPANY.

STRACHAN v. CALEDONIAN  
RAILWAY COMPANY.

(See *ante*, March 11, 1909, vol. xlvi, p. 517.)

*Process—Jury Trial—Motion for New Trial  
—Third Trial Allowed—Withdrawal of  
Case from Jury—Contributory Negligence.*

The pursuer in an action of damages for personal injury obtained a verdict which was set aside on the ground that contributory negligence on his part had been proved. At the new trial the pursuer upon practically the same evidence again obtained a verdict.

The Court *set aside* the second verdict as contrary to evidence, and *granted* a third trial.

*Observations* by the Lord Justice-Clerk and Lord Johnston on the practice of withdrawing a case from the jury.

John Mitchell, measurer, Greenfield Street, Alloa, brought an action against the Caledonian Railway Company for £1000 damages in respect of personal injury sustained through his having been knocked down and run over while crossing a line of rails in Grangemouth Docks, the property of the defenders, owing as he alleged to the fault of the defenders' servants. A similar action at the instance of Nathan Strachan, mill-hand, who was also run over and injured on the same occasion, was tried along with Mitchell's action, the evidence in the latter case being held as evidence in the former. The jury returned verdicts for the pursuers. In both cases the defenders obtained a rule, and on 11th March 1909 the First Division ordered new trials—see *ante*, vol. xlvi, p. 517.

At the second trials, on 27th and 28th December 1909, before Lord Johnston and a jury, the jury again returned verdicts for the pursuers, assessing the damages due to Mitchell at £400 and to Strachan at £200. In both cases the defenders again obtained a rule.

The averments of the pursuers are given in the previous report, and the import of the evidence sufficiently appears from the opinions of the Lord President in the previous report and from the opinion of Lord Johnston (*infra*).

At the hearing on the rules the pursuers argued—The sole question here was whether there was contributory negligence. It was a question of fact and was purely for the jury, who were the tribunal saddled by the Legislature with the duty of determining the matter. They had done so in favour of the pursuers. Their verdict was conclusive, unless it could be shown that there was absolutely no evidence upon which they could have arrived at the result at