HOUSE OF LORDS.

Monday, May 13, 1912.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Atkinson, and Shaw.)

BALL *v.* WILLIAM HUNT & SONS, LIMITED.

Referred to in the Preceding Case.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1, *sub-sec.* 1, *Sched. I* (1) (*b*), (3)—*Incapacity for Work—Disfigurement—No Change in Physical Condition.*

A workman who, in consequence of an accident, lost the sight of an eye without suffering any personal disfigurement and without losing his power to get work, fifteen years later met with another accident to the same eye, which necessitated its removal. In consequence of the disfigurement thereby produced he found himself unable to get employment.

Held that incapacity for work in the sense of Schedule I (1) (*b*), (3), is not limited to physical incapacity, but includes also the absence of a market for the workman's labour, due to some defect personal to himself caused by the injury he has received which renders his labour unsaleable, and that the workman was accordingly entitled to compensation.

A workman sought compensation from his employers in the circumstances stated *supra in rubric* and in their Lordships' judgments. His claim was refused by the County Court Judge and the Court of Appeal (COZENS-HARDY, M.R., and BUCKLEY, L.J., FLETCHER MOULTON, L.J., *dissenting*).

The workman appealed.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this case the appellant was already blind of one eye when in September 1910 the blind eye was again injured by an accident in the course of his work and had to be removed. The result is alleged to have been that his disfigurement prevented his obtaining employment. He remained equally able to do work after as he was before September 1910, but says that his partial blindness became apparent as it had not been before, and so he could get no work. Can it be said that incapacity for work resulted from the injury of September 1910? The injury did not prevent him from being able to work, but it did reduce him to a physical condition which prevented him from getting work suitable in the circumstances.

In my opinion, if the County Court Judge thinks these facts are established (as I gather he did think) he ought to award compensation on the footing of total or partial incapacity according as he may find. By the first section of the Workmen's Compensation Act compensation is to be paid for personal injury by accident within the terms of the Act. What the schedule does is to fix the scale and conditions. In the ordinary and popular meaning which we are to attach to the language of this statute I think there is incapacity for work when a man has a physical defect which makes his labour unsaleable in any market reasonably accessible to him, and there is partial incapacity for work when such a defect makes his labour saleable for less than it would otherwise fetch. I think this view is in accordance with previous decisions of the Court of Appeal. The principle is carefully discussed in the *Cardiff Corporation* v. *Hall*, [1911] 1 K.B. 1009; and certainly the opposite view would leave a workman uncompensated for what may be very real and direct consequences of an injury. In my opinion this case should be remitted to the learned County Court Judge.

LORD MACNAGHTEN—I am unable to agree in the conclusion at which the Court of Appeal has arrived, and I must add with all respect that the process by which the learned Judges, who formed the majority of the Court, arrived at that conclusion has not been regarded with much favour in this House.

Both the Master of the Rolls and Lord-Justice Buckley turn to the First Schedule. Finding there the expression "total or partial incapacity for work," they hold that it is an answer to the present claim to say that the claimant's physical condition is just what it was before the accident happened, and that his dexterity and capacity for manual labour are as good as ever. "Incapacity for work" they take to be the same as "incapacity to work." In fact one of the learned Judges treats the two expressions as synonymous and uses them as convertible terms. Now "incapacity for work," as the phrase is used in the schedule, seems to me to be a compendious expression, meaning no more than inability to earn wages or full wages, as the case may be, at the work in which the injured workman was employed at the time of the accident. But whether that be so or not, it is laid down most distinctly in the House—*Lysons* v. *Andrew Knowles & Sons, Limited*, [1901] A.C. 79—that you must not resort to the schedule for the purposes of cutting down the right to compensation. The right to compensation is given by the Act. The Act is the workmen's charter. The schedule prescribes the scale of compensation and the mode and conditions of its enjoyment. That is the office of the schedule. The key to the meaning of the Legislature is not to be looked for there.

As Lord Halsbury observed in the case I have just mentioned, "the first thing one has to do is to apply one's mind to what is the substantive intention and meaning of the statute." It seems to me that the injury for which the statute gives compensation is not mutilation or disfigurement or loss of physical power, but loss

or diminution of the capacity to earn wages in the employment in which the injured workman was engaged at the time of the accident. At that time this man was earning 20s. a-week as an edge-tool moulder. That is what he was worth then. What is he worth now? As he is now no one will take him on that work. Everybody would say off-hand, two eyes are better than one for such a job as that. So he is heavily handicapped in seeking employment. This disadvantage or disqualification, whatever you choose to call it, has resulted from the accident. It is (to use another expression to be found in the Act) "due to the accident."

It seems to me, therefore, that this workman is entitled to claim compensation under the Act. With the amount of compensation, if compensation be awarded, we have nothing to do. That is a matter for the arbitrator or the County Court Judge.

I agree that the appeal should be allowed and the case remitted to the proper tribunal.

LORD ATKINSON—In this case the workman, through an accident arising out of and in the course of his employment, lost his eye. It was a blind eye, no doubt, but it is impossible to contend, I think, that the loss of even a blind eye is not an injury within the meaning of section 1, sub-section 1, of the Workmen's Compensation Act of 1906. His employer was therefore liable to pay him compensation under the provisions of that section. That is the workman's absolute right. Before the accident he was, though blind of one eye, physically able to do the work he was then doing, and is still able to do work of that kind. There was a market for his labour then because his blindness was not observable. There is no market for his labour now because his blindness is observable. The recent accident has destroyed his market, though it has left his physical ability to work what it was before. Before the later accident he was not suffering under any incapacity whatever. He was able to work and able to get employment, and I cannot see how the words "antecedent incapacity" apply to the appellant's case. Though the first section of the statute plainly confers upon an injured workman the right, in cases coming within it, to obtain compensation, it does not fix the amount of compensation or indicate the principle on which the compensation is to be measured; that is the function of the schedule, but it is its only function. The employer is by section 1, as he was by section 1 of the Workmen's Compensation Act of 1897, made liable to pay compensation in accordance with the schedule—elastic words importing in themselves a degree of latitude which it is difficult to define—*Thomas* v. *Kelly*, 13 A.C., p. 511.

The argument for the respondent resolves itself into this, as section 1, sub-section (*b*) of the schedule only provides for the payment of compensation in two cases—(*a*) where the death of the workman results from the injury, and (*b*) where total or partial incapacity for work results from it—the workman in the present case cannot get any compensation because he is as able physically to do his work as he ever was, though no one will employ him to do it. In other words, that in construing the words "incapacity for work" used in the schedule the absence of a market for the workman's labour, though due, not to the state of the labour market nor to fluctuations of trade, but to some defect personal to himself caused by the injury he has received which renders his labour unsaleable, is to be entirely left out of consideration. His power of earning wages may be completely gone, yet for the loss of that power directly resulting from the disfigurement caused by the accident he is not to receive any compensation. Such a construction as this, it would appear to me, cuts down the right expressly conferred upon the workman by the statute. It involves a repeal *pro tanto* of section 1.

The question whether a schedule such as this can legitimately be construed in such a way as to cut down the right conferred by the statute was considered in your Lordship's House in the case of *Lysons* v. *Knowles & Sons*, [1901] A.C. 79. In that case Lysons, the workman, a miner, entered the respondent's employment on a Tuesday, in which day in each week the miners' week in the respondents' colliery ended. He worked piecework on that day and on the Thursday following, earning 6s. each day. He was then injured by an accident, giving a right to compensation under the first section of the Act of 1897, which is practically identical with the first section of the present Act.

The County Court Judge held that the workman had earned 12s. during one week, and that he was therefore entitled, under section 1, sub-section (*b*), of the schedule to that Act, to 50 per cent of his average weekly earnings, *i.e.*, 50 per cent. of 12s., or 6s. per week for every week during which his disablement lasted after the last fortnight. The words of the sub-section are "not exceeding 50 per cent. of his average weekly earnings during the previous twelve months." The Court of Appeal held that Lysons was not entitled to any compensation, as he had not been employed for over two weeks. This construction plainly cut down the right conferred upon the workman by the statute, and was for that very reason disapproved of and rejected in this House. At page 85 of the report Lord Halsbury, then Lord Chancellor, is reported to have said—"The first thing, I think, one has to do is to apply one's mind to what is the substantive intention and meaning of this statute. Does it mean that every workman who is employed in one of the prescribed trades shall (subject to certain conditions not relevant to the matter now in debate) be entitled to compensation? Or does it mean that only workmen shall be entitled to compensation, in respect of whom it is possible to say that the periods of their employment and the mode in which

they are paid will render it possible to established an average weekly payment so that anybody who comes outside that category is not entitled to any compensation at all? For my own part I cannot entertain a doubt that the Legislature did mean that every workman in the prescribed trades should be entitled to compensation, and I think that is the language which one would naturally expect to have been used by the Legislature if that was the meaning of the enactment. But it is now said that the language of the enactment is that he is to "be liable to pay compensation in accordance with the First Schedule of this Act." It is to be observed that even upon that language it is not such compensation as is enacted in the schedule, but "in accordance with the First Schedule of the Act," and when we look at the First Schedule of the Act we find that there are a variety of provisions which are very intelligble indeed if we take what I say is the leading enactment that every workman is entitled to compensation. But it is said, if a workman is not employed for at least two weeks how can you average his earnings or his agreed earnings by an "average," which when you have only got one term is an impossible phrase? Well, for my own part, if I came to the conclusion that there had been no mode by which the quantum should be fixed in the schedule, I should still be of opinion that there was no repealing of the right which had first been granted, but that by arbitration, or by some other means, which I think would be quite within the powers of the Act, the compensation should be ascertained; because I do not look upon the provision made in respect of compensation as one which, either in language or in the intention of the Legislature, was meant to cut down and over-ride the primary right given to every workman to compensation, but I regard it as a mode of ascertaining what the quantum ought to be."

Lords Macnaghten, Davey, Shaw, Robertson, and Lindley gave judgment to the like effect, and Lord Brampton concurred.

On examining the schedule one plainly sees that what is to be compensated for is not, as in ordinary actions of tort, the pain and suffering which the plaintiff has endured, or the disfigurement of, or injury to, his body which has been inflicted upon him, but the loss of the power to earn wages which has resulted from the injury. In the case of the workman's death it is only those dependants who are dependent wholly or in part upon those earnings who are to receive any compensation, and the amount of it is, subject to certain limits, measured by the amount of those earnings in the employment in which he met with the accident which caused his death. However great may be the pecuniary loss the dependants sustain from the workman's death by reason of the cessation on that event of a pension, or life annuity, or income from property, they are not entitled to any compensation under the Act in respect of it.

The obvious meaning of section 1, subsection (*b*), of the schedule, when read with section 3, is that the higher scale is to be adopted when the workman is not able to earn anything, and that where he does earn or is able to earn something in a suitable employment credit is to be allowed for this sum to the extent specified. The words "or is able to earn" are most significant. They point to the retention of the power to earn something in a suitable employment, and to the extent that this power is retained or has returned, though he may not try to exercise it, he does not incur the particular kind of loss for which compensation is to be given. Section 16 of the schedule points in the same direction. The weekly payment may be ended or diminished or increased according, presumably, as the ability to earn has completely returned, has increased, or has diminished. There would be no meaning, it would appear to me, in these provisions making the amount of wages which were, are, or can be earned, so much the basis of compensation if the market for the workman's labour has to be left out of consideration. The earning of wages depends as much on the demand for the workman's labour as it does upon his physical ability to work. If because of his apparent physical defects no one will employ him, however effective he may be in fact, he has lost the power to earn wages as completely as if he was paralysed in every limb.

If it be, then, the paramount object of the Act to compensate for the loss of the power to earn wages, the workman whom, because of the injury caused by an accident, nobody will employ, comes within its purview as much as one who is rendered unable to do any work at all. I am unable to follow the line of reasoning based upon the antecedent existence of the man's blindness. It was not apparent, and as the result shows he got employment because it was not apparent. The employers, possibly because they think the loss of the workman's vision, which is now obvious, will render him more liable to accident, refuse to employ him.

It may well be that the words "incapacity for work" would not in their ordinary meaning, *prima facie*, apply to a case such as this, but it has been well established that in the construction of a statute it is perfectly legitimate to give some of its words a meaning different from their ordinary meaning where that is necessary to forward and effect the main purpose and object of the enactment.

I therefore concur that the matter should be remitted to the County Court Judge to ascertain the amount of compensation.

LORD SHAW—I think this case is an important one, but its material facts can be stated in a word. About fifteen years ago the appellant, who is an edge-tool moulder, suffered an injury to his left eye,

the ball of which was penetrated by a steel chip. This accident resulted in the blindness of that eye, but did not produce any disfigurement in the workman's appearance, which remained unchanged. On the 7th September 1910, however, the appellant being engaged in cutting out brickwork, was struck in the same eye by a piece of brick. The result of this accident was that the eye had to be removed. A marked disfigurement has consequently resulted from the mutilation. With regard to his power to do work it remains as before, but with regard to his power to get work, that appears to have been lost or at least diminished, and up to the time of the trial, notwithstanding frequent applications in various quarters, he has been refused employment on account of the disfigurement above referred to.

The case depends upon the construction of certain frequently quoted words in the Workmen's Compensation Act of 1906. The first passage referred to is section 1 (1)— "If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employers shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act." It is admitted that the appellant did sustain a personal injury by accident arising out of and in the course of his employment, and so far as this subclause is concerned the language of the Act would seem to cover his case.

It is, however, the words of Schedule I that have caused difficulty and difference of opinion. The material words of that schedule are as follows:—"Schedule I (1) —The amount of compensation under this Act shall be (*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding 50 per cent. of his average weekly earnings," &c. It is said, on the one hand, that incapacity for work has not resulted from the latest injury because he can do work as well now as before. On the other hand, so far as the practical result to the workman is concerned, this would seem to avail him little if by the injury he had been so disfigured that while he could do the work if he obtained it he nevertheless cannot get employment, and so far as compensation to him is concerned, from all practical points of view he equally suffers by reason of the accident whether the accident has prevented him from doing work or from getting it. In one view "incapacity for work," which is the language used in the sub-section, might not be held to include the case of his being rendered ineligible for employment, whereas many cases occur to the mind, and illustrations have been given in the judgment of Lord Justice Fletcher Moulton which show that as a matter of common experience the capacity for work may remain quite unimpaired although the eligibility as an employee may be diminished or lost. If a butler is burned by the explosion of a amp, his appearance may be such after his recovery as to prevent him from obtaining a situation as a butler, and he may find himself out of all kinds of employment. In domestic service or in business, particularly shop business, or in cases like those of commercial travellers, the instances might be repeated without limit in which the workman or workwoman would be forced into the ranks of the unemployed by an accident of the kind figured, although in each of these instances if employers or society would only have disregarded appearances the workman's real capacity would have been found the same as before.

Admitting the difficulties I think that not a little help in their solution arises from this consideration, that when compensation for injury is being treated of by the statute, the theory and datum upon which such compensation proceeds is that of compensation for injury to the worker as a wage earner, and it is the incapacity to earn a wage which forms the standard upon which the compensation is reckoned. A good illustration is found in section 3 of the schedule, which says that "3. . . . in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper." In the present case, as in those other illustrations to which I have ventured to refer, the workman is neither earning nor is he able to earn, anything after the accident, and at least he may have to be turned on to a less remunerative position. In the latter case it is quite clear that the *data* have been reached under the statute for the estimate of compensation, namely, the difference between his former and his later wage, that difference having been brought about by reason of personal injury by accident arising out of and in the course of his employment. In these circumstances I incline to the opinion that the true reading of the statute is that "incapacity for work," the term employed, does include the case of his eligibility to obtain work being diminished or lost, or, in other words, of his capacity to get work being impaired or destroyed. In the case before us this arose from the mutilation and disfigurement which he suffered by reason of the accident in September 1910.

It is necessary to keep clearly in view in such cases the distinction between inability to obtain work arising as the result of the injured or disfigured condition of the workman and inability to obtain work arising from the state of the labour market. It does not appear to me to be any part of the scheme of the statute to make the employer responsible for a non-employment which is owing to general economic causes. The non-

employment, as I say, must be connected with the injury which has been received and with the incapacity for work which has been thereby produced. Even treating that incapacity as inclusive of the case of the impossibility or improbability of obtaining work, as well as of doing it, that impossibility or improbability must be traceable to the thing which has differentiated this workman from his other able-bodied comrades, namely, the injury received. If, for instance, one of the probabilities were that at the first appearance of the scarcity in the demand for labour, a workman in his injured condition would be the first to suffer, that is simply one of those circumstances with regard to which the County Court Judge as arbitrator would have to make his best and most judicious estimate. He might—probably he would in the majority of cases—treat such a problematical consideration as entering into his estimate in but a slender degree. But the refinements in these cases have been so frequent that I desire to say once for all that the entire results causally connected with an injury ought to enter into the estimate, but that results attributable to economic causes, such as the state of the labour market, ought to be excluded therefrom.

I am accordingly of opinion that the conclusion reached by the learned Lord Justice Fletcher Moulton is preferable to that reached by the majority of the Court of Appeal, and that this class of case, namely, of persons suffering injuries which result in their unemployment, should not be excluded from the scope of the compensation payable under the Act.

I am glad to think that the general conclusions on this subject which I have ventured to state are in accord with the trend of the decided cases in England upon this subject. These cases are already legion. But the question whether compensation is under the statute limited to an award in respect of physical incapacity alone has of necessity, and owing to the circumstances as presented to the Courts, been considered alongside of this other, namely, whether an award once made, say in consequence of the report by a medical referee, can be reviewed by reason of subsequent experiments, and in particular of the experiment which the injured man has himself made of placing his labour on the market, with his experience of finding or being unable to find employment.

Upon this latter point the opinion of Lord Collins (then Master of the Rolls) in *Sharman* v. *Holliday* (1904, 1 K.B. 238) has been frequently referred to, and has been followed. There is in the case of the *Cardiff Corporation* v. *Hall* (1911, 1. K.B. 1015), what, if I may venture to say so, appears to me a most valuable summary of the English case law upon this subject. These opinions I respectfully adopt. In addition I would venture to quote two sentences from the Master of the Rolls as also expressing my own view on this subject. In *Clarke* v. *The Gas Light and Coke Company* (21 Times Law Reports, 185) the learned Judge states the point thus—"The contention was that the only question to be considered was as to the physical condition of the applicant, and that when it was once proved that his physical condition was such as to render him capable of earning the same wages as before, there was an end of the question. It was argued that the question whether his opportunity of finding work from which he might earn the same wages had been narrowed in consequence of the accident ought not to be taken into consideration, the one and only question being as to his physical capacity for work." Upon that subject his view was as follows—"If the applicant was unable in consequence of the accident to command the right of earning wages, who was to suffer, he or his employers? In his opinion, if the applicant, after repeated attempts, could not find an opportunity of putting his diminished powers of working into operation he was justified in saying that his wage earning capacity was not the same as before."

In *Radcliffe* v. *The Pacific Steam Navigation Company* (1910, 1 K.B. 685) the same learned Judge says (p.688)—"Although I think it is competent to the County Court Judge to review an award similar to that which was made in June, it is right to add that any such application should be jealously scrutinised, and further, that great care must be taken not to allow the fluctuations of the general labour market to justify a review. But a workman is entitled to say that, although the physical effects of an accident may have disappeared or may be unaltered, yet he as a damaged man may be more and more handicapped in the labour market as years pass by. The unwillingness of masters to employ men suffering from any infirmity has been greatly increased by the Workmen's Compensation Act, and this is a circumstance which cannot be disregarded." I refer also, in particular, to the judgment of Lord Justice Buckley, in which he dwells upon the distinction between inability to obtain employment arising from the injury and such inability arising from general economic conditions. To that distinction I have already alluded.

I regret to observe the marked difference which has arisen on this subject between the English and the Scottish Courts. Upon the general question as to the treatment of the worker under the statute from the point of view of a wage earner, the opinion of Lord M'Laren in *Clelland* v. *The Singer Manufacturing Company* (1905, 7 Fraser 983, 42 S.L.R. 757) may be referred to. "What," said he, "the arbiter has to consider is not what the man is receiving, whether in the name of wages or charity, from his employer, but what could the man earn in the open market after the accident had happened as distinguished from what he actually earned in the open market before the accident." And later expressions show in some points a near approximation to the views of the learned Judges in England. In *Carlin* v. *Stephen & Sons, Limited* (1911 S.C. 907, 48

S.L.R. 862) Lord Salvesen analyses these English cases and says—"In my opinion incapacity for the purposes of the Workmen's Compensation Act is primarily physical incapacity, in which may well be included such personal disfigurement as may lessen the sphere of employment, although the power of work remains as good as before. It does not, in my opinion, include inability to get employment which arises from something not personal to the workman." Had the state of the Scotch decisions been in accord with these sentences, a difference between them and the English cases would have been far to seek.

In the case, however, of *Boag* v. *Lochwood Collieries, Limited* (1910 S.C. 52, 47 S.L.R. 47) the question of what is the meaning of the statutory expression "incapacity for work" was broadly and emphatically decided. The case arose under the Workmen's Compensation Act 1897, but the language under construction and the point were the same as in the subsequent Act. A workman averred that he was entitled to have a weekly payment reviewed and increased in respect that his employers were unable to give him suitable light work, and that he was unable to obtain light employment elsewhere. It was held that these grounds were not relevant for inquiry. The Lord Justice-Clerk said—"As I read the Act of Parliament and relative schedule the question to be decided in an application to assess compensation, or under an application for review of weekly payments, is a question of the man's physical capacity to work. Now in this case it had been decided by agreement that the workman was partially capable for work. Is it any reason for reviewing the payment to say that the employers cannot find him suitable work for his capacity, or that he has not been able to find such work himself? If the appellant means that his averments, if proved, would of themselves be a sufficient ground for saying that the compensation must be increased to the full allowance under the statute, I should certainly not for myself yield for one moment to any such demand. I take it that the whole question is that of "capacity to work," which cannot be decided merely by the fact that the workman has not got work, but only by such evidence as satisfies the Court whether or not he is able to work. This is a broad affirmance of the proposition that incapacity under the Act must be limited to physical incapacity and to that alone. So stated, I think the proposition, with which I have already dealt at length in the earlier part of my opinion, to be an unsound proposition, and the decision of *Boag* to be erroneous. On 28th June 1911 the First Division pronounced a decision in the same sense in the case of *Macdonald or Duris* v. *Wilsons and Clyde Coal Company* (reported *ante*). The case, however, following *Boag* as it did, was treated as being governed by that decision. It follows that, in my view, that case has also been erroneously decided.

I humbly think, accordingly, that the decision of the Court below should be reversed, and that the case should be remitted for adjudication by the arbitrator as to the amount of compensation to be awarded to the appellant.

Judgment appealed from reversed.

Counsel for Appellants -R. B. D. Acland, K.C.—E. W. Carr. Agents—Murr, Rusby, & Archer, Solicitors.

Counsel for Respondent--W. Shakespeare. Agents—Helder, Roberts, Walton, & Giles, Solicitors.

COURT OF SESSION.

Friday, May 17.

FIRST DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Dundee.

DAVID ALLEN & SONS, BILLPOSTING LIMITED *v.* THE DUNDEE AND DISTRICT BILLPOSTING COMPANY, LIMITED.

Sheriff — Process — Appeal — Competency — Value of Cause—Action for Interdict and £50 *Damages — Appeal on Question of Damages only—Sheriff Courts (Scotland) Act* 1907 (7 *Edw. VII, c.* 51), *sec.* 28.

The tenant of an advertising hoarding brought an action of interdict and damages in the Sheriff Court against his successor, averring that the latter had assumed possession too soon, thereby interfering with his (the pursuer's) advertisements, the sum claimed as damages being £50. By the time the Sheriff-Substitute came to deal with the question of damages the pursuer's lease had expired, so that the crave for interdict was no longer part of the case. He accordingly recalled the interim interdict originally granted, and awarded the pursuer £50 damages. The defenders appealed.

Held that as the conclusions for interdict had become of purely historical interest, the value of the cause was now entirely pecuniary, and that as the sum sued for did not exceed £50, the appeal was incompetent and must be dismissed.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51) enacts, sec. 28—"Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute or of a Sheriff, but that only if the value of the cause exceeds fifty pounds. . . ."

David Allen & Sons, Billposting Limited, Dundee, *pursuers*, brought an action against the Dundee and District Billposting Company, Limited, in which they craved interdict against the Dundee and District Billposting Company, Limited, *defenders*, using a certain billposting stance