Michaelmas Term
[2012] UKSC 57
On appeal from: [2011] CSIH 16

JUDGMENT

Ruddy (AP) (Appellant) *v* Chief Constable, Strathclyde Police and another (Respondents) (Scotland)

before

Lord Hope, Deputy President
Lady Hale
Lord Mance
Lord Kerr
Lord Reed

JUDGMENT GIVEN ON

28 November 2012

Heard on 29 October 2012

Appellant
W James Wolffe QC
Kenny McBrearty
(Instructed by Taylor & Kelly)

Respondent
Rory Anderson QC
Douglas Ross
(Instructed by Simpson & Marwick and The Scottish Government Legal Directorate)

LORD HOPE (with whom Lady Hale, Lord Mance, Lord Kerr and Lord Reed agree)

1. On 5 September 2004 the appellant Kevin Ruddy was arrested by two officers of Tayside Police in execution of a warrant for his arrest and taken to Perth police station. The following day he was taken by two officers of Strathclyde Police by car from Perth police station to Partick police station in Glasgow. He alleges that he was abused, threatened with violence and assaulted by the Strathclyde police officers before, during and after that journey as a result of which he suffered injury. He decided to take proceedings against the Chief Constable of Strathclyde Police for damages, and he applied for legal aid. His application for civil legal aid was intimated to the Chief Constable in November 2004. Strathclyde Police treated this intimation as a complaint and remitted the matter to its Complaints and Discipline Branch ("the Complaints Branch"). In December 2004 the Complaints Branch reported receipt of the complaint to the Procurator Fiscal for Glasgow.

2. On 10 January 2005 the Procurator Fiscal instructed the Complaints Branch to carry out an investigation into the complaint. On 13 January 2005 Inspector Darroch of the Complaints Branch was appointed to carry out the investigation. On 14 March 2005, having completed his investigation, he submitted his report to the Procurator Fiscal. On 10 May 2005 the appellant was interviewed by staff from the Procurator Fiscal's office and he was precognosced. On 6 June 2005, having considered Inspector Darroch's report and a medical report which had been instructed by the appellant's solicitor, the Procurator Fiscal wrote to the appellant to inform him that she was satisfied that the available evidence did not justify criminal proceedings against any police officer. The Complaints Branch then reviewed the complaint. By letter dated 22 June 2005 the Chief Superintendent of the Complaints Branch wrote to the appellant to inform him that Strathclyde Police did not consider it necessary to take any proceedings for misconduct against the police officers.

The proceedings

3. In August 2005 the appellant commenced proceedings in the Sheriff Court at Glasgow in which he sought an award of damages. Two separate craves were set out in the initial writ. First, there was a claim of damages against the Chief Constable of Strathclyde Police. This award was sought at common law for loss, injury and damage alleged to have suffered as a result of the actings of the police officers and as just satisfaction under section 8(3) of the Human Rights Act 1998

for a breach of the appellant's rights under article 3 of the European Convention on Human Rights, for both of which the Chief Constable was said to be vicariously liable. Second, there was a claim of damages against the Chief Constable and the Lord Advocate jointly and severally. This award was sought as just satisfaction under section 8(3) of the Human Rights Act 1998 and section 100(3) of the Scotland Act 1998 for a breach of the appellant's right under article 3 of the Convention to an effective investigation into his complaint.

4. The Chief Constable and the Lord Advocate ("the respondents") lodged answers to the initial writ in which they took pleas to the relevancy of the averments that were made against them. They did not challenge the competency of the action. On various dates between November 2006 and April 2007 the sheriff heard a debate in which the respondents argued that the claim that was made against them for breach of the procedural obligation under article 3 of the Convention was irrelevant. On 5 June 2007 the sheriff held that this claim was irrelevant, refused to allow the second crave to go to proof so far as it was directed against the Chief Constable and dismissed the action so far as it was directed against the Lord Advocate. The appellant appealed to the Sheriff Principal. On 25 April 2008 the Sheriff Principal refused the appeal. In the course of the hearing of the appeal the appellant was given leave to amend his pleadings so as to direct the second crave against the respondents severally rather than jointly and severally.

5. The appellant then appealed to the Inner House of the Court of Session. A hearing was set down for 7, 8 and 9 December 2010. When the case called before an Extra Division (Lady Paton, Lord Clarke and Lord Abernethy) on 7 December 2010 the court informed counsel that it seemed to it, having considered the papers before the hearing, that the case raised fundamental questions of competency. It was suggested that, while it was competent to bring a claim for damages at common law in the sheriff court, the second crave was a distinct and separate claim which raised questions of administrative law that would require to be made the subject of judicial review in the Court of Session. The court adjourned the hearing to 2.00 pm to allow counsel to consider this issue. Having heard argument on the point, it discharged the remainder of the appeal hearing and made avizandum.

6. At advising on 2 March 2011 the Extra Division issued an opinion which had been prepared by Lord Clarke in which he dealt with the point that had been raised at the hearing on 7 December 2010: [2011] CSIH 16, 2011 SC 527. He said that, on further consideration, the problems appeared to the court to be even greater than had been discussed at that hearing and then set out the court's reasons for holding on other grounds that the action as a whole was incompetent. As indicated in para 16 of the opinion, the case was put out By Order on 8 March 2011 to allow the parties to make any representations that they wished to make before the court pronounced any further interlocutor. Counsel for the appellant did

not ask for time to make any representations. On the motion of the respondents the court then pronounced an interlocutor dismissing the action. The appellant has now appealed to this court.

The issues as to competency

7. The background to the issues raised by the appeal is provided by the following comments that Lord Clarke made in para 5 of his opinion after he had summarised the appellant's pleadings:

> "Any practitioner in the business of civil litigation might, when faced with this omnibus approach to several claims in a single action, query the appropriateness of this approach. He or she might reflect that in a single sheriff court action a straightforward claim for damages for assault finds itself coupled with (a) a claim for breach of the substantive obligation under article 3 of the Convention and (b) claims against two defenders 'severally' for breaches of the obligation arising under the article as regards investigation and inquiry. One action is being brought against two separate defenders with three distinctive juristic bases of claim being made."

8. The objections that the Extra Division took to the competency of the action, on closer examination, were as follows. First, there was the point that was raised with counsel at the hearing on 7 December 2010. At that stage it was directed to the subject matter of the second crave, in which damages are claimed for a failure to carry out an investigation which was compliant with article 3. Second, there was the fact that the proceedings sought to address three distinct issues against two separate defenders. This appears to have been a new point, as it had not been discussed at the hearing on 7 December 2010.

9. The first objection was summarised by Lord Clarke in these words in para 6:

> "What the appellant's averments in articles 8, 9, 10 and 11 seek, in substance, is to have reviewed the investigatory proceedings that have been carried out so far, to have a finding that these proceedings were incompatible in some way with article 3 of the Convention and consequently that the appellant is entitled to damages for breach of Convention rights, not because of any assault. That is quite simply a separate and distinct claim in law from a claim based on common law assault and deals with quite distinct subject-matter in fact and

> law. This claim, when properly analysed, involves an attack, in administrative law, on administrative acts and decisions, namely the administration of the complaints procedure in the instant case and possibly also an attack on the adequacy or otherwise of established procedures in general."

He said that it raised questions which, normally at least, would require to be made the subject of judicial review in the Court of Session. Returning to this point in para 14, Lord Clarke indicated that this objection extended to the claim for just satisfaction for breach of the substantive obligation under article 3 that was the subject of the first crave as well that which was the subject of the second crave. He said that the claims would require to be brought by way of judicial review. This was because, once unshackled from the claim of damages for assault, the appellant's claims involving human rights questions required the procedures in question to be reviewed and tested in accordance with administrative law principles: Clyde and Edwards, *Judicial Review* (2000), para 8.16; *Cocks v Thanet District Council* [1983] 2 AC 286.

10. The second point was summarised by Lord Clarke in these words in para 12:

> "It is a well established principle of our law and procedure that
>
> 'one pursuer cannot sue two or three defenders for separate causes of action, and put into his summons a conclusion for a lump sum, and then by means of putting in the words 'jointly and severally, or severally', as the case may be, ask the court to split up this lump sum of damages and give a several decree for what the court thinks proper'
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> (*Ellerman Lines Ltd v Clyde Navigation Trs* 1909 SC 690, pp 691,692; see also *Barr v Neilson* (1868) 6 M 651; Maclaren, *Court of Session Practice*, p 266; Thomson and Middleton, *Manual of Court of Session Practice*, pp 56, 57, 65). The present proceedings seek to address three distinct issues, distinguishable in fact and law, against two separate defenders. Our system of pleading does not provide, nor should it provide, for such an approach. To countenance such a procedure would, among other things, fly in the face of the practice in relation to conjunction of processes….This attempt at an 'omnibus' approach to pleading distinct causes of action against different defenders in the same action also runs counter to the approach of the court in relation to counterclaims."

What the appellant was seeking to do in these proceedings, he said, was to bring an action against two defenders in a case of unconnected wrongs. This objection was taken to the proceedings as a whole, the question being whether it was competent for the appellant to raise in a single action a common law assault claim against the Chief Constable and a procedural article 3 claim against the Chief Constable and the Lord Advocate. It was a ground for dismissing the whole case as incompetent.

11. In para 15 Lord Clarke said that it seemed to the court that another problem of competency was perhaps raised, which was this:

> "can there be two distinct defenders in relation to alleged breaches of the state's obligations under article 3 of the Convention?"

As this matter had not been discussed at all the court expressed no concluded view on it, but said it was an issue that might merit further consideration. This objection, it seems, was to the fact that the procedural article 3 claim was the subject of a crave directed against the Chief Constable and the Lord Advocate severally.

12. The issues that are raised by this appeal can therefore be summarised as follows:

> (1) Was it competent for the appellant to bring his claims for damages in respect of the substantive article 3 claim and the procedural article 3 claim, or either of them, by way of action or did he require to bring them, or either of them, by way of judicial review?
>
> (2) Was it competent for the appellant to raise the common law assault claim and the substantive article 3 claim against the Chief Constable and the procedural article 3 claim against the Chief Constable and the Lord Advocate together in the same action?

Mr Anderson QC for the respondents did not seek to support the reasoning of the Extra Division on the first issue. He said that he was in broad agreement with the way the appellant presented his argument, but he drew attention to the way Lord President Hamilton analysed the case in *Docherty v Scottish Ministers* [2011] CSIH 58, 2012 SC 150, paras 19-20 which indicated that the court's remarks on this point did not form part of the reasoning which had led to the whole action being dismissed. He did however seek to support the Extra Division's conclusion on the second issue, which was that the action as a whole as pled was incompetent.

Discussion

13. This is a highly unusual case, not only because of the way the claims that the appellant is seeking to make are presented in the pleadings but also because of the way it was dealt with by the Extra Division. It is, of course, always open to the court to raise question about the competency of proceedings that are brought before it. And, as the Court of Session is to a large extent the master of its own procedure, the Supreme Court will always be reluctant to interfere with the judgment of the Inner House as to whether proceedings with which it has to deal are competent. As in so many other matters, this court is guided by the practice of the House of Lords before the appellate jurisdiction of the House was transferred to it in October 2009. In *Cowan & Sons v Duke of Buccleuch* (1876) 4 R (HL) 14, 16 Lord Chancellor Cairns said:

> "In matters of procedure and practice, and still more in matters of discretion, and, above all, where the Judges of the Court below are unanimous as to a matter of procedure and practice, the uniform practice of your Lordships' House has been not to differ from that opinion unless your Lordships are perfectly satisfied that it is founded upon erroneous principles."

That remains true today, and nothing that I am about to say is intended in any way to depart from it. Regrettably, however, it is clear that the test which he laid down is entirely satisfied in this case.

(a) the first issue

14. It is clear from Lord Clarke's opinion, and the narrative of events that the court has been provided with by counsel, that the idea which first attracted the Extra Division's attention was that the subject matter of the second crave raised issues that ought to have been the subject of proceedings by way of judicial review in the Court of Session. As thinking on this point developed, however, the way the objection was explained in para 14 of Lord Clarke's opinion seems to have extended to the human rights claim in the first crave as well. This is because he referred, without distinguishing one crave from the other, to "the claims by the appellant involving human rights questions". In para 20 of *Docherty v Scottish Ministers* Lord President Hamilton indicated that he found it difficult to accept that this passage should be read as meaning that any claim whatsoever against a public authority alleging an infringement of a Convention right must be brought in Scotland by judicial review:

> "Such a process would be quite inept for certain proceedings, for example, proceedings simply for damages for an infringement of article 3 by reason of isolated physical torture by a public official for whose actings the public authority was vicariously responsible. Such proceedings could, and should, be initiated by action. They might be so initiated in the sheriff court."

I agree, but I do not think that these cautiously worded remarks can be said to dispose entirely of the objection which seems to have been taken to the claim for breach of the substantive obligation under article 3. The appellant's claim relates to a course of conduct, not an isolated act of physical torture.

15. The fallacy which undermines the Extra Division's whole approach to this issue, however, lies in its assumption that the appellant is seeking an exercise of the court's supervisory jurisdiction. That is not so. He is not asking for the review or setting aside of any decision of the Chief Constable or the Lord Advocate. He is not asking the court to control their actions in that way at all. His case in regard to both craves is based on averments of things done or omitted to be done and actions that were taken or not taken. The allegations are of completed acts or failures to act. He is not seeking to have them corrected in order to provide a foundation for his claim, nor does he need to do so. What he seeks is just satisfaction for the fact that, on his averments, his article 3 Convention rights have been breached. The essence of his claim is simply one of damages.

16. Lord Clarke referred in para 14 of his opinion to *Cocks v Thanet District Council* [1983] 2 AC 286 where it was held that it would be contrary to public policy and an abuse of process for a person to proceed by way of an ordinary action to establish that a public authority's decision had infringed rights that were entitled to protection under public law. Where private rights depended on prior public law decisions, they must ordinarily be litigated by judicial review. As Lord Clarke saw it, the illegal nature of the respondents' actings and decisions that was alleged in this case had first to be established before any question could arise as to whether the appellant was entitled to a remedy. That had to be done by judicial review, not by an ordinary action in the sheriff court.

17. But, as Sedley LJ pointed out in *Clark v University of Lincolnshire and Humberside* [2000] 1 WLR 1988, para 16, the ground has shifted considerably since *Cocks v Thanet District Council* was decided. It was established soon afterwards that the requirement for litigation by judicial review could not be a universal rule: *Wandsworth London Borough Council v Winder* [1985] AC 461. The fact that a claim that was based on a private right had a public law dimension did not mean that it was an abuse of process to proceed by private action: *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1

AC 624. In para 17 of his judgment in *Clark* Sedley LJ endorsed the test which was suggested in *de Smith, Woolf & Jowell's Judicial Review of Administrative Action*, 5th ed, (1995) that what should matter was whether the choice of procedure was critical to the outcome. In *D v Home Office* [2005] EWCA Civ 38, [2006] 1 WLR 1003, para 105 Brooke LJ said that he had no doubt that, if the proceedings in that case in which damages were claimed for false imprisonment in breach of the claimants' Convention rights were viable, they were properly brought as a private law action.

18. English authority as to practice in this field must be approached with caution, as the distinction between public and private law has never been regarded as determining the scope of the supervisory jurisdiction of the Court of Session. But the position that has now been reached in England is not difficult to apply in the Scottish context. The sole purpose for which the supervisory jurisdiction of the Court of Session may be exercised is to ensure that a person to whom a power has been delegated or entrusted does not exceed or abuse that jurisdiction or fail to do what it requires: *West v Secretary of State for Scotland* 1992 SC 385, 413. The proceedings which the appellant has raised are not of that character. As Lord President Hamilton said in *Docherty v Scottish Ministers*, para 20, the process of judicial review would be quite inept for proceedings in which damages are claimed for an isolated act of physical violence which was in breach of the article 3 Convention right. But the number of acts or incidents cannot sensibly make any difference. Judicial review would be just as inept for a claim of damages for injury and damage sustained as the result of a course of such conduct. On any view the objection that appears to have been taken to the competency of the claim for just satisfaction for breach of the substantive obligation under article 3 must be regarded as misconceived.

19. The objection to the competency of the claim for just satisfaction for breach of the procedural obligation which is the subject of the second crave is in no better position. Here too the claim is in essence one of damages, and judicial review for its determination would be just as inappropriate. The decisions of which the appellant complains do not need to be reviewed and set aside in order to provide him with a basis for his claim. His position can be compared with that of the widow and daughter of James Dow Mitchell who was attacked and killed by his next door neighbour. They brought proceedings against Glasgow City Council as the local housing authority by way of an ordinary action in which they claimed damages for negligence at common law and a judicial remedy under section 8(3) of the Human Rights Act 1998 on the ground that, in failing to remove the neighbour from his house next door despite a long history of aggressive behaviour towards Mr Mitchell, the local authority had acted in a way that was incompatible with Mr Mitchell's right to life under article 2 of the Convention: *Mitchell v Glasgow City Council* [2009] UKHL 11, 2009 SC (HL) 21.

20. It was not suggested at any stage in that case that the claim that was brought under section 8(3) of the Human Rights Act was incompetent. The facts of that case are, of course, different. But, just as in this case, the complaint was of a procedural failure to give effect to the Convention right. And, just as in this case too, it was based on actions taken or not taken and things done or omitted to be done. No orders were being sought to regulate the local authority's conduct. There was no need to bring the decisions complained of under judicial review to provide a basis for the claim. The decision of the Inner House in *Docherty v Scottish Ministers* to allow the pursuers' claims for just satisfaction for an infringement of their rights under articles 3 and 8 of the Convention to proceed by way of an ordinary action in the sheriff court falls into the same pattern; see also *C v Advocate General for Scotland* [2011] CSOH 124, 2012 SLT 103. I would respectfully endorse the reasons which the Lord President gave in paras 22-24 for rejecting the argument, which was prompted by the decision of the Extra Division in this case, that the actions were incompetent.

21. For these reasons I would hold that, as the objection that was taken to the competency of the second crave in this case was unsound in principle, it is open to this court to differ from the Extra Division and reject the objection.

(b) the second issue

22. Lord Clarke began his examination of this issue by referring to the well-established principle that one pursuer cannot sue two or three defenders for separate causes of action and put into his summons a conclusion for a lump sum: *Ellerman Lines Ltd v Clyde Navigation Trs* 1909 SC 690, per Lord President Dunedin at pp 691-692. As Maclaren, *Court of Session Practice* (1916), p 266 puts it, where there is a single wrong it is competent for a pursuer to ask for a decree for a lump sum against joint delinquents jointly and severally, but not where there are separate wrongs. In *Liquidators of the Western Bank of Scotland v Douglas* (1860) 22 D 447 Lord Justice Clerk Inglis said at p 497 that, if defenders were sought to be subjected in liability on separate and unconnected grounds inferring separate individual liability, the proceeding would be so flagrant a violation of ordinary practice that the summons must at once be dismissed. On the other hand, it is commonplace to have a joint and several conclusion against two delinquents who have both contributed to the loss and damage which the pursuer has suffered. That is seen, for this purpose, as a single wrong. And joint and several liability may follow where two different breaches of contract have produced a common result: see *Grunwald v Hughes* 1965 SLT 209.

23. In *Barr v Neilson* (1868) 6 M 651 the pursuer raised an action against a husband and his wife conjunctly and severally or severally for one sum by way of damages in respect of two acts of slander, one by the wife, the other by the

husband, on two different occasions. It was held that this was incompetent. Lord President Inglis said at p 654 that it was out of the question that the two parties could be made conjunctly and severally liable for two disconnected wrongs. Lord Deas said at p 655 that he would not be disposed to understand Lord Justice Clerk Inglis's judgment in the *Western Bank* case to mean that it was not competent to conclude in one summons against six different defenders for six different debts. In that case the pursuers sought distinct sums against different individuals in respect of the different periods of time during which the constitution of the board was different, and the action was allowed to proceed. But it was clear, on looking at the condescendence as explained by the issues in that case, that no joint liability was concluded for in *Barr v Neilson* at all. In *Ellerman Lines Ltd v Clyde Navigation Trs*, on the other hand, there was, as the Lord President said at p 692, a perfectly good averment against the defenders as joint delinquents and it was held that the action, in which an award of a single lump sum was being sought against them both, was competent.

24. The principle is, as Lord Clarke said, well-established. But his opinion, in which he said that the court was of the view that the action fell to be dismissed as incompetent, was issued to the parties before they had had an opportunity to address it on the point. This was unfortunate, as a careful examination of the pleadings and the authorities would have shown that the principle has not been breached.

25. This is not a case where separate defenders are being sought to be found liable in a single lump sum. There are two craves in which the appellant is seeking an award of damages. The first crave, which is based on averments of assault at common law and a breach of the substantive obligation under article 3, is directed against the Chief Constable only. The second crave, which is based on averments that the procedural obligation under article 3 was breached, is directed against the Chief Constable and the Lord Advocate. Before the Sheriff Principal the word "severally" was substituted for the words "jointly and severally" in the crave as originally drafted, but Mr Wolffe QC said that it was his intention to seek leave to restore those words and I would proceed on the assumption that leave will be given for this to be done. It is clear that the wrongs which are the subject of these two craves are separate wrongs, committed at different times by different people. But the appellant is not asking for a decree for the defenders to be found liable in a single lump sum for these separate wrongs. This objection to the competency of the action was misconceived, and it must be rejected.

26. Lord Clarke drew attention in para 15 to the fact that the procedural article 3 claim was the subject of a single crave directed against the Chief Constable and the Lord Advocate severally. He suggested that this perhaps raised another issue about competency. But, as the matter had not been discussed at all, he expressed no concluded view on it. The point was not the subject of argument in this court

either, so it would not be appropriate for me to make any comment on it. It is sufficient for present purposes, however, to note that it was not for this reason that the action was held to be incompetent.

27. It is, of course, the case that the appellant has combined two distinct claims, founded on different grounds, in one single action. This raises a different point, to which Lord Clarke referred in para 13 when he said that omnibus pleadings of the sort sought to be applied in this case would defeat the ends of avoiding undue complexity and keeping good order in litigation. If permitted, he said, they would result in "litigation bedlam".

28. It is possible to imagine cases where this objection could properly be taken. For example, in *Treadwell's Drifters Inc v RCL Ltd* 1996 SLT 1048 Lord Osborne was faced with an action in which the pursuers were seeking different remedies against four defenders on the one hand and a fifth defender on the other. Although the claims arose from a common sequence of events, the grounds of action against the defenders were different. One was the delict of passing off, and the other was breach of contract. The procedure to be followed in an accounting under a passing off claim was quite different from that for a claim of damages for breach of contract: p 1059J-L. Lord Osborne was unable to see how the court could follow these procedures in one action in a manner that was in accordance with the requirements of justice, and he dismissed the action as incompetent: p 1060G-H.

29. On the other hand the court has permitted actions to proceed against two defenders on separate grounds where considerations of convenience favour letting it proceed to proof as a whole. In *Yoker Housing Association Ltd v McGurn Logan Duncan & Opfer* 1998 SLT 1334 the pursuer sought damages in the same action against a firm of architects and a firm of engineers when defects came to light in works for which they had been responsible. They sued the architects for some of those defects and the architects and engineers jointly and severally for the others. Lord Maclean rejected the argument that, because the case against the architects was based on one ground and the case that was made against them jointly and severally was based on another, the action was incompetent.

30. In *Toner v Kean Construction (Scotland) Ltd* 2009 SLT 1038 an architect raised an action against developers and a firm of architects subsequently employed by them for breach of copyright in drawings that he had prepared for the developers. His case against the developers was that they had breached his copyright by constructing the development in accordance with his drawings. His case against the architects was that they had, in breach of copyright, copied substantial parts of drawings which he had prepared for the developers. Lord Bannatyne rejected the plea that the action was incompetent. The two claims were intimately connected, the respective cases were factually and legally interlinked,

and it was manifestly convenient to have the case against the two defenders in the same action. If there were to be two separate actions, that would be likely to lead to injustice and manifest inconvenience: para 101.

31. Mr Anderson QC for the respondents submitted that the test that should be applied was whether the two claims were so essentially different that they ought not to be tried together. The subject matter of the first crave was in very small compass, while the second crave raised separate and quite distinct issues. Furthermore the Procurator Fiscal was involved in the second crave but not the first. He accepted that convenience had a part to play in the assessment, but there was more to it than that. Regard had to be had to the fundamental principle that one action should not be brought for separate and unconnected wrongs. An exacting approach was needed where, in such a case, there was more than one defender. The court had to have regard to the fact that the Procurator Fiscal was not involved in the first crave at all.

32. The guiding principle, where an objection to competency is taken on these grounds, is whether the way the action is framed is likely to lead to manifest inconvenience and injustice. The court must, of course, seek to be fair to all parties. It must take a pragmatic approach to the question whether the way the case is presented is so complex and disconnected that, despite the opportunities that exist for case management, it will not be possible to conduct the case in a way that meets the requirements of justice. The same is true if a motion is made for two actions to be heard together, or for two actions to be conjoined. Each case will have to be looked at on its own facts. There is no absolute rule one way or the other, so long as the rule which says that it is incompetent for a pursuer to ask for a decree in a lump sum for separate wrongs is not broken. Rules of procedure should, after all, be servants, not masters, in matters of this kind.

33. An examination of the pleadings in this case shows that the two claims, although separate, are interconnected. The averments in articles 2 to 6 set out the basis for the claim in the first crave. Articles 8 to 12 set out the basis for the claim in the second crave. The basis for each claim is, in that respect, separate from each other. But article 8 begins by referring to the subject matter of the appellant's complaint, which was his treatment by the Strathclyde constables, and in article 10 it is said that the acts and omissions of the Complaints Branch and the Procurator Fiscal were incompatible with the appellant's right to an investigation of his complaint. It is plain that the case made in articles 8 to 12 cannot proceed to proof without leading the appellant's evidence about his treatment at the hands of the Strathclyde constables. He will have to give evidence on that same matter too in support of the first crave. It would be inconvenient, and quite possibly unjust, to require him to give evidence about it twice over in two separate actions on two separate occasions. The fact that the Procurator Fiscal is not concerned in the first crave is not likely to lead to any practical difficulties of case management, and

certainly not to an injustice. Lord Clarke was right to refer in para 13 of his opinion to the need to avoid undue complexity and to keep good order in litigation. But the pleadings in this case are not unduly complex, and good order in litigation favours the two claims being heard together. They are interconnected both in law and in fact, and it would be in the interests of justice and more convenient for them not to be separated.

34. For these reasons I would hold that, as the objection that was taken to the competency of the action as a whole was not well founded, it is open to this court to differ from the Extra Division on this issue too and reject the objection.

Conclusion

35. I would allow the appeal and recall the Extra Division's interlocutor. As there is no plea in law directed to this issue, I would find that the action is competent. The case will be returned to the Inner House for a hearing of the appeal against the Sheriff Principal's interlocutor.