by Mr Brown, and the only thing that has not been done is, that Robert Blyth's children have not raised a separate action against Brown before Brown raised his action against the defenders. I think this circuity of action is avoided by holding the present action competent, and circuity of action is to be avoided where it can. The defenders suffer no harm by the course adopted. They would either have required to defend any action brought against Brown, or pay him the expenses he was put to in defending himself. The amount of the principal debt sought to be constituted against them is the same whatever course is adopted to enforce payment of it. If the sum sued for is due to Blyth's children, the defenders are the ultimate debtors therein; and the concurrence of Brown—who may be regarded as the primary debtor in the present action—makes the case really a demand on the part of the creditors against the ultimate debtors.

But I confess I am a good deal moved to affirm the Lord Ordinary's interlocutor on this question of competency by the terms of the bond granted by the defenders to Mr Brown. By that bond (which was granted in respect of the payment to them of the very sum for which they are now sought to be made liable), the defenders undertook to appear in any court when called upon, and account for the whole executry estate "to anyone having interest" so as to free the cautioner Mr Brown from any liability thereanent. In the face of that undertaking I do not well see how they can maintain their present plea. They have been called upon by Mr Brown in this action to answer to him and Robert Blyth's representatives for part of the executry funds, in order that Mr Brown may be freed from liability therefor. They are therefore only being called on to fulfil their undertaking by persons who have a direct right to call them to account for Robert Blyth's executry funds. I have no doubt of the pursuers' title to sue. Brown has an undoubted title to sue to the effect of relieving himself of the claims made by Blyth's children, which he must meet if the defenders do not do so; and Blyth's children have an interest and title to sue for the recovery of that estate, which, if it exists at all, is now due to them.

LORD RUTHERFURD CLARK—I have had great difficulty in this case. If the action is competent it is so only by reason of the terms of the bond. I see no other reason for its being held competent.

The LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for Pursuers—Lees—A. S. D. Thomson. Agent—Marcus J. Brown, S.S.C.

Counsel for Defenders—Cook. Agents—Fife, Ireland, & Dangerfield, S.S.C.

Saturday, July 15.

FIRST DIVISION.

WILLISON *v.* PETHERBRIDGE.

Process—Appeal for Jury Trial—Judicature Act 1825 (6 *Geo.* IV. *c.* 120), *sec.* 40—*Reparation—Dismissal of Apprentice.*

Held that an apprentice who had raised an action against his master in the Sheriff Court for £50 for alleged wrongous dismissal in breach of his indenture, and had afterwards appealed to the Court of Session for jury trial under the 40th section of the Judicature Act, was entitled to have his case tried by a jury, no special cause to the contrary having been shown.

Upon 28th October 1892, John Willison, Broughty Ferry, was by indenture apprenticed for five years to James Petherbridge, dental surgeon, Dundee, but upon 14th February 1893 was dismissed for alleged failure to fulfil the duties and obligations incumbent on him under his indenture.

In March 1893 he brought an action in the Sheriff Court at Dundee against Mr Petherbridge for £50 as damages for illegal dismissal in breach of his indenture, that being the penalty to be paid by either party failing to fulfil the contract. In May 1893 he appealed to the Court of Session for jury trial, and submitted an issue in ordinary form.

The defender argued that jury trial should not be granted (1) because of the trifling nature of the claim, and because the witnesses were all in or near Dundee—*Bethune &c.*, v. *Denham*, January 6, 1886, 13 R. 882, and case of *Mitchell* v. *Sutherland* there referred to; *Nicol* v. *Picken*, January 24, 1893, 20 R. 288; (2) because this was not merely a case for assessing damages, but involved the construction of a legal document.

Argued for appellant—(1) The sum sued for was above that fixed by statute, which was £40. The claim was not a trifling one, for it implied vindication of character. He was entitled to jury trial unless some special reason could be adduced to the contrary, which had not been done—*Hume* v. *Young Trotter & Company*, January 19, 1875, 2 R. 338; *Mitchell* v. *Urquhart*, February 9, 1884, 11 R. 553; *Crabb* v. *Fraser*, March 8, 1892, 19 R. 580; (2) there was nothing unusual in the terms of the indenture involving complicated questions of law. It was a case very suitable for a jury—*Stewart* v. *Crichton*, March 15, 1847, 9 D. 1042.

At advising—

LORD PRESIDENT—I think that this case should go to a jury. It is an action of damages, and the fact that the sum claimed is only £50 is not of itself sufficient cause for keeping it away from a jury. No doubt it involves construction of a contract, but a contract of a very simple nature. There is nothing unusual in the terms of the instrument constituting the relation of master and apprentice. The facts are of a

familiar description, and may well be submitted to a jury.

LORD ADAM—This is an action of damages, and the Legislature says that such cases arising in this Court are to go to a jury unless special cause be shown for this not being done, or the parties agree otherwise. From the fact that such cases arising in the Sheriff Court may be appealed to this Court for jury trial, we must take it that the view of the Legislature still is that actions of damages of the requisite amount should be tried by a jury. That amount is fixed at £40, and therefore the fact that this is a claim for only £50 is not *per se* sufficient ground for not sending it to a jury.

LORD M'LAREN—The last case in which we considered the question of dispensing with jury trial was an action of damages for assault. We were then all of opinion that in cases of *quasi*-delict the pursuer, or for that matter the defender if he wished it, was entitled to jury trial. In actions for breach of contract like the present we have a freer hand. There may be cases of breach of contract (especially those arising out of maritime contracts, where the amount of damage, if any, is often a matter of calculation, there being no dispute as to the facts) where we should send the case for proof to the Sheriff, or a judge, without the assistance of a jury, these not being properly and in substance actions of damages. This is a claim of damages for breach of the whole contract, and the damages to be awarded, if any, are just what a jury may think proper. I am therefore for sending it to a jury.

LORD KINNEAR—I am of the same opinion. This is an action of damages, and the pursuer is entitled to jury trial unless special cause is shown to the contrary. The slenderness of the amount claimed is not enough, because the Legislature has fixed the amount which determines whether a case may be brought here for jury trial or must be tried by the Sheriff in his own Court. The amount claimed here is above the limit laid down, although not much above it, and the circumstances are eminently suited for a jury.

The Court approved the issue proposed.

Counsel for Pursuer and Appellant—Orr—Ralston. Agents—George Inglis & Orr, S.S.C.

Counsel for Defender and Respondent—Dewar. Agents—White & Nicholson, S.S.C.

Saturday, July 15.

FIRST DIVISION.

[Sheriff of Caithness.

CORMACK *v.* KEITH & MURRAY.

Trust—Law-Agent Appointed by Truster—Power of Trustees to Change the Agency—Interdict.

Held that a law-agent to a trust appointed by the truster holds office at the will of the trustees, and is not entitled to interdict other law-agents chosen by them from acting.

Case of *Fulton* v. *M'Allister*, February 15, 1831, 9 Sh. 442, *distinguished.*

The late George Sinclair Waters died on 15th March 1893 leaving a trust-disposition and settlement, by which he appointed two gentlemen to be his trustees and executors, and which contained the following clauses—"And in addition to the usual powers of gratuitous trustees known in the law of Scotland, I specially authorise and empower my trustees to employ factors or law-agents for the management of my estate, who may be of their own number, and to allow such factor a reasonable remuneration, and the law-agent the usual professional fees for their respective services: And I appoint my law-agent to these presents to be law-agent to my trustees, and desire that he should instruct my trustees in the proper and efficient carrying out of this my settlement and trust-disposition and settlement. . . . In witness whereof these presents, written on this and the five preceding pages by David Cormack, solicitor, Wick, my law-agent, are subscribed by me at Tister aforesaid, the sixth day of April eighteen hundred and ninety-two."

Founding upon these clauses, the said David Cormack brought an action in the Sheriff Court at Wick against Messrs Keith & Murray, solicitors there, who, as he alleged, had been acting as law-agents for Mr Waters' trustees, praying the Court "to interdict, prohibit, and restrain the defenders from acting as law-agent or law-agents to the trustees of the said George Sinclair Waters, and from acting as law-agent or law-agents of the said trustees to instruct them in the proper and efficient carrying out of the said settlement and trust-disposition and settlement of the said George Sinclair Waters, so long as the pursuer is alive, and is able and willing to act."

The Sheriff-Substitute (MACKENZIE) granted interim interdict, but upon a record being made up, dismissed the action as incompetent and irrelevant and recalled the interdict.

The pursuer appealed to the Sheriff (THOMS), who upon 17th June 1893 recalled the interlocutor, continued the interim interdict, and sisted the process pending the result of an action of interdict brought by the same pursuer against the trustees.

The defenders appealed to the First Division of the Court of Session, and argued—(1) It was irrelevant to ask interdict against