and the ideal force was more or less in the region of discretion. I think that the safe course is to draw the attention of the jury to the character of the question which is before them, and that this will be best done by giving a little emphasis to the kind of excess which alone is worthy of their attention, and therefore I think the words "wrongfully and illegally" should go in. The issue should accordingly be—[*quotes*].

I have said nothing as to the first issue, there being no controversy as to it, and accordingly it will stand as adjusted by the parties.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court approved the first issue as adjusted by the parties, and the second issue in the following form—"Whether, on or about said date, and in or near the said station, the defenders' said servant, while acting within the scope of his employment in seizing and detaining the pursuer, wrongfully and illegally used unnecessary force and violence, to the loss, injury, and damage of the pursuer?"

The attention of the Court was called to the fact that the summons concluded for only one sum of damages, viz., £50, while there were two issues.

LORD PRESIDENT—Lord M'Laren points out that the position of the pursuer is, that "I am entitled at least to £50 which ever of these two issues is taken." It is practically the same thing as putting £50 on each issue.

Counsel for Pursuer—Salvesen—Wilton. Agent—R. S. Rutherford, Solicitor.

Counsel for Defenders — Balfour, Q.C. —M'Lean. Agents—Hope, Todd, & Kirk, W.S.

Saturday, February 5.

SECOND DIVISION.

[Sheriff of Lanarkshire.

JAMIESON *v.* HARTIL.

Process—Appeal for Jury Trial—Remit to Sheriff—Court of Session Act 1825 (6 *Geo. IV. c.* 120), *sec.* 40.

In an action of damages brought in the Sheriff Court for injuries sustained by being run over in the street, in which the sum sued for was £50, the pursuer, after proof had been allowed, appealed for jury trial. The defender moved that the case should be remitted to the Sheriff Court for proof, in consideration of the trifling nature of the injuries. The Court *refused* the motion.

Bethune v. *Denham*, March 20, 1886, 13 R. 882; *Mitchell* v. *Sutherland*, January 23, 1886, reported in a note to *Bethune*, *cit.*; and *Nicol* v. *Picken*, January 24, 1893, 20 R. 288, *distinguished.*

Question—Whether the pursuer in the event of success ought to be found entitled to more than Sheriff Court expenses.

John Jamieson, surfaceman, Coatbridge, as tutor and administrator-in-law of his pupil son John Jamieson, brought this action in the Sheriff Court at Airdrie against Joseph Hartil, fruiterer, Coatbridge. He craved decree for the sum of £50 as damages sustained through his said pupil son, a boy four years and three months old, being run over while walking along the pavement of Main Street, Coatbridge, by a van the property of and then being driven by the defender, who was crossing the pavement at a cart entry to his back premises.

The pursuer averred, *inter alia*—"(Cond. 4) By said accident the said John Jamieson's right ear was severely injured, being nearly severed from his head. His left leg was also badly injured, and he was otherwise bruised and hurt. He has since been confined to the house and under medical treatment. The injury to his leg threatens to be permanent in its effects. He has suffered great pain, and the pursuer has been put to considerable expense and trouble."

The defenders pleaded—"(1) The pursuer's said child not having been injured through any fault of the defender, the latter is entitled to decree of absolvitor, with expenses. (2) The injuries received by the pursuer's child are exaggerated, and the amount of compensation claimed is excessive."

By interlocutor dated 17th December 1897 the Sheriff-Substitute (MAIR) before answer allowed a proof.

The pursuer appealed to the Second Division of the Court of Session for the purpose of having the case tried by jury.

Upon the case being called in the summar roll, counsel for the defender admitted that the pursuer had a relevant action, but moved that, in consideration of the trifling nature of the injuries, the case should be remitted to the Sheriff Court instead of being sent for trial by jury. He argued that this course was within the discretion of the Court and quite competent, and quoted *Bethune* v. *Denham*, March 20, 1886, 13 R. 882, and *Mitchell* v. *Sutherland*, there reported in a note; *Nicol* v. *Picken*, January 24, 1893, 20 R. 288. Alternatively he asked for a proof in the Court of Session.

Counsel for the pursuer was not called upon.

LORD JUSTICE-CLERK—This is certainly a very small case indeed. When such a case goes to a jury it involves special proceedings and consequent expense, and the expense greatly exceeds the whole amount claimed by the pursuer. It is therefore very undesirable that such cases should be sent to a jury. But the difficulty I have is that this is just the kind of case which in ordinary course is sent for trial by jury. It is a case of damages for personal injury by being run over in the street. There are no apparent legal difficulties which would render it inappropriate for jury trial,

Now, by statute it is competent to a pursuer to appeal for jury trial whenever the sum sued for is not less than £40. If the case had been brought originally in the Court of Session the pursuer would have been entitled to demand a trial by jury, and when the case is brought in the Sheriff Court the pursuer is entitled, if the sum sued for is not less than £40, to come here so as to put himself in the same position as regards the right to jury trial as if he had brought the case in this Court originally.

I should certainly think this is a case which ought not to be sent before a jury, but I am not able to see any ground for refusing the pursuer's motion. The cases which were quoted to us by Mr Salvesen were both cases in which there were special difficulties which might have raised questions at the trial which would have necessitated rulings by the presiding judge, and perhaps led to a bill of exceptions. In this case there are no such complications or difficulties, and I am therefore reluctantly driven to the opinion that the case must be sent to a jury.

LORD YOUNG—I am of the same opinion. I have more than once expressed my views as to the expediency of allowing a pursuer as matter of right to demand a trial by jury in such cases as the present. I should suggest that it is a question whether the statutory rules upon this matter ought not to be modified. But as matters at present stand the pursuer has only exercised his statutory right, and in the case of an action of this kind—a simple case of damages for personal injuries sustained by being run over in the street—there is no precedent for refusing to send the case to a jury if the pursuer desires it. The statutory rule which gives him a right to demand a jury trial has not yet been altered, and I am not disposed in this case to make a first precedent for refusing his demand. The only ground suggested for doing so is that the injuries are admittedly inconsiderable, and the pursuer's damage is estimated by himself—and we may certainly assume not underestimated—at the sum of £50. It would be a very good rule that pursuers were not to be entitled to appeal for trial by jury when the damages sustained are only estimated at £50. Of course, if the limit were raised in point of amount, that could easily be evaded by putting the sum claimed sufficiently high to entitle the pursuer to have his case tried by jury, but other means might be taken to ensure that cases which are chiefly brought in the hope that defenders may be compelled by the certainty of being involved in great expense to pay something, although they are conscientiously persuaded that nothing is due, should not necessarily be sent to a jury. These means would require to be carefully considered, but though there are difficulties I do not think they are insuperable. At one time of my life I had occasion to consider the matter, and I came to the conclusion that the difficulties were not insuperable. But these are hardships for which a remedy must be sought elsewhere, and as the rule stands at present I think this case must go to a jury.

LORD TRAYNER—I agree; but I do so with reluctance. I do not think this case should be sent to a jury, but as the law now stands I do not think we can refuse the pursuer's demand if he presses it. The injuries said to have been sustained were, on the statement of them, trifling, and the damages are estimated—and we may be sure not underestimated—at £50. The witnesses who can speak to the facts are all at Coatbridge, and the Sheriff is perfectly competent to try the case. The expense of bringing these witnesses here for the trial will nearly equal the whole amount which is claimed by the pursuer. I should like to add that in the event of the pursuer getting a verdict I shall not hold myself precluded by that fact from considering whether expenses should not be limited to expenses on the Sheriff Court scale.

LORD MONCREIFF — I am of the same opinion. I regret that we must send this case to a jury, but as the law now stands I think we have no alternative. It will be for consideration whether if the pursuer is successful he should be allowed more than Sheriff Court expenses.

Of consent the Court sent the case to trial on the record without an issue.

Counsel for the Pursuer and Appellant—Cullen. Agent—David Dougal, W.S.

Counsel for the Defender and Respondent — Salvesen. Agents — Macpherson & Mackay, S.S.C.

Tuesday, February 15.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

MACKINTOSH'S TRUSTEES *v.* DAVIDSON & GARDEN.

Inhibition—Discharge of Heritable Security on Payment of Debt—Assignation.

At common law inhibition does not prevent the discharge by a creditor on payment by his debtor of a debt for which a heritable security has been granted, and it makes no difference that the debt was paid by another at the request of the debtor, in exchange for an assignation by the creditor of his security.

Opinions that a heritable creditor in a bond and disposition in security is bound to assign it to any nominee of his debtor on receiving payment of the amount due to him, provided that such an assignation was not to his own prejudice.

Inhibition—Registration—Notarial Intimation—Act of Sederunt, 19th February 1680—*Court of Session (Scotland) Act* 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 18.