

may vary according to the circumstances of the district; but here we have the specific statutory enactment that wherever there is a bridge, that bridge shall be fenced. The Sheriff has held that this bridge was not sufficiently fenced by an erection eight to twelve inches high. I think he was right in so holding, and therefore that we should find accordingly.

LORD YOUNG and LORD MONCREIFF concurred.

LORD TRAYNER was absent.

The Court dismissed the appeal: Found in fact and in law in terms of the findings in fact and in law in the interlocutor of the Sheriff-Substitute: of new assessed the damages at £25, and decreed therefor.

Counsel for the Pursuer and Respondent—T. B. Morison—MacRobert. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defenders and Appellants—Salvesen, K.C.—Hunter. Agents—Sibbald & Mackenzie, W.S.

Saturday, November 30.

#### FIRST DIVISION.

COOPER & COMPANY v. M'GOVERN.

(Reported *ante*, p. 102.)

*Expenses—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37)—Expenses of Appeal—Adjustment of Appeal.*

In a stated case under the Workmen's Compensation Act 1897 the Court pronounced an interlocutor by which, *inter alia*, they found the appellants liable in "the expenses of the appeal." At taxation the Auditor disallowed certain charges in the respondent's account for correspondence and attendance at meetings with the appellants, and for attendance at a meeting with the Sheriff, all in connection with the adjustment of the stated case. The respondent objected to these charges being disallowed. The Court *approved* of the Auditor's report.

In this stated case under the Workmen's Compensation Act 1897 (reported *ante*, *ut supra*), the Court on 28th November 1901 pronounced an interlocutor by which, *inter alia*, they found as follows—... "Find the appellants liable in the expenses of this appeal, and remit," &c. At taxation the Auditor taxed off certain charges for correspondence and attendance at meetings with the appellants and for attendance at a meeting with the Sheriff, which had all been incurred in adjusting the stated case for appeal. These charges were thirteen in number and amounted to the sum of £5, 2s. 6d. The respondent objected to these charges being disallowed.

Argued for the respondent—The expenses of the appeal must cover the presentation and adjustment of the case, otherwise the

expenses connected therewith would be irrecoverable, for they formed no part of the arbitration before the Sheriff. In an ordinary appeal from the Sheriff Court the marking of the appeal was the first step, and the appeal was marked in the Sheriff Court, yet the expense was included in the expenses of the appeal. Here the adjustment was the first step, and the expense of it should be allowed. Although it was the Sheriff who had to state the case, there must be some expense incurred by the parties and their agents—(A. of S., 3rd June 1898, sec. 9 (c)). The Auditor's former practice had been to allow these expenses.

Argued for the appellants—The adjustment of the case was a summary matter. The duty was laid on the Sheriff, and it was not necessary for the parties to be present at all. No one could interfere with the Sheriff in this matter, his discretion being absolute, and if the parties objected to his exercise of it their remedy was to apply to have him ordained to state a case. The intention of the Act was that no expense should be incurred at this stage, and if such expenses were allowed it would enable a litigant to put his opponent to considerable expense, and then by failing to proceed further to make it impossible for him to recover. In any event, the whole expenses should not be allowed, but a sum should be modified to cover all expenses, as in stated cases in criminal and registration cases.

LORD PRESIDENT—It appears to me that the charges in question cannot be described as being in any reasonable sense expenses of the appeal allowed by the interlocutor. It would be very much against the manifest intention and policy of the statute if thirteen separate charges amounting together to £5, 2s. 10d. in connection with the adjustment of the stated case were to be so allowed. The statute provides that the Sheriff shall state the case, and it does not contemplate such a series of attendances by law-agents, correspondence, &c., as are here charged for. It appears to me therefore that the Auditor's decision should be affirmed. It was stated that the Auditor had formerly allowed such charges; and if this was his practice it is satisfactory to know that he has altered it.

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

The Court approved of the Auditor's report.

Counsel for the Respondent—T. B. Morison. Agent—Alexander Wylie.

Counsel for the Appellants—Hunter. Agents—Macpherson & Mackay, W.S.