the pursuers' company, which the whole of its members are bound to observe, and which by the articles of association the company is authorised to make, there are further restrictions, such as (art. 20) the prohibition of members exchanging bottles with anyone not a member. There are other restrictions on the conduct of business, but it is sufficient to instance those I have referred to. Whether those restrictions are lawful or are unlawful as in restraint of trade need not be considered; they are restrictive conditions on the conduct of trade, and therefore bring the pursuers' combination or company within the statutory definition of a trades union. That being so, the registration of the pursuers' company under the Companies Acts is void (34 and 35 Vict. c. 31), sec. 5. If the pursuers' company is not an incorporated company it cannot sue in its descriptive name without the addition of the names of at least three of its members. The pursuers sue here in their descriptive name only, and such an instance is radically defective. I think therefore that the plea of no title should be sustained and the action dismissed.

LORD MONCREIFF—The pursuers design themselves as "The Edinburgh and District Aerated Water Manufacturers' Defence Association, Limited, incorporated under the Companies Acts 1862 to 1890."

Now the Trade Union Act 1871, sec. 5, sub-sec. 3, enacts—"The Companies Acts 1862 and 1867 shall not apply to any trade union, and the registration of any trade union under said Acts shall be void."

Therefore if the pursuers' Association is a trade union the only title which they put forward is bad, and the first plea-in-law for the defenders, no title to sue, must be sustained.

The question therefore is whether the pursuers' Association is a trade union. I have anxiously considered this question, because the leading object of the Association appears to be not merely lawful but laudable, viz., to protect the bottles and boxes of members bearing their name or trade-mark from being used or dealt with by persons not having lawful authority. But looking to the very wide terms of the definition of a trade union in section 16 of the Trade Union Act 1876, I am unable to hold that the pursuers' Association does not come within the definition. I am unable to say that it is not a combination for regulating the relations between masters and masters, or that it does not impose restrictive conditions on the conduct of the trade or business in question. The regulation of relations between masters and masters and the restrictive conditions on the conduct of the trade may be, and so far as I can at present see, are no more than are necessary to secure results beneficial to the general body of aerated water manufacturers. But according to the definitions in the Act of 1876 that is not the test. The articles of association and byelaws for the purpose of securing the objects of the Association do impose certain restrictions upon the way in which the manufacturers shall carry on their business, and do so under sanction of certain heavy penalties which the council of the Association are empowered to impose.

That being so, I am unable to hold that the pursuers' Association is not a trade union in the sense of the Acts; and accordingly the registration of the Association under the Companies Acts is void.

That is sufficient for the decision of the case and the first plea-in-law for the defenders must be sustained; but I express no opinion as to whether if the pursuers sue as a voluntary association they may or may not be entitled to recover the penalties in question.

The LORD JUSTICE-CLERK—The Trade Union Act is precise that the Companies Acts shall not apply to a trades union.

The objects of this Association in this case are most proper, but I agree with your Lordships that the conditions imposed are restrictive in the sense of the statute and fenced by heavy penalties. I therefore agree that the plea of no title to sue must be sustained.

LORD YOUNG was absent.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutors appealed against: Sustain the first plea-in-law for the defenders; dismiss the action; and decern."

Counsel for the Pursuers and Respondents—Jameson, K.C.—A. A. Fraser. Agent—George Arnott Eadie, S.S.C.

Counsel for the Defenders and Appellants—Guthrie, K.C.—M'Lennan. Agents—Dalgleish & Dobbie, W.S.

Thursday, July 16.

FIRST DIVISION.

[Sheriff-Substitute at Alloa.

RANKINE *v.* ALLOA COAL COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 2—*Notice of Injury—Prejudice to Employer—Appeal—Question of Fact or Law—Remit to Sheriff to State Case.*

The Workmen's Compensation Act 1897 enacts (section 2)—"Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof. . . . Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or

that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause."

In a case where notice of an accident had not been given for five months the Sheriff found in fact that the employers had been prejudiced in their defence by the want of notice, dismissed the case, and refused to state a case for appeal. Circumstances in which the Court *remitted* to the Sheriff to state a case setting forth the facts relative to the question whether the employers had or had not been prejudiced by the want of notice, and to the question whether the want of notice had been occasioned by mistake or other reasonable cause, and his judgment thereon.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37) — *Process — Preliminary Defences — Duty of Sheriff as Arbitrator.*

Opinions (per Lords Adam, M'Laren, and Kinnear) that where, in an arbitration under the Workmen's Compensation Act, preliminary objections or defences are stated, it is the duty of the Sheriff as arbitrator, even if he is of opinion that such objections or defences fall to be sustained, to proceed to hear the case and estimate the amount of compensation that would be due on the hypothesis that the workman was entitled thereto.

On 25th October 1901 William Rankine, miner, Tillicoultry, while working with the Alloa Coal Company, Limited, in endeavouring to replace a derailed hutch, strained the aorta at its junction with the heart, whereby he was injured.

Rankine did not give notice of a claim under the Workmen's Compensation Act until 24th March 1902, though in the preceeding October he verbally reported his injury to the inspector of the Alloa Coal Company. On 22nd April 1902 he instituted proceedings for compensation under the Act.

In these proceedings the Sheriff-Substitute (DEAN LESLIE) granted absolvitor, on the ground that no relevant case for compensation had been stated. Rankine having appealed, the Court, on 14th November 1902, of consent of parties, sustained the appeal, and remitted the case to the Sheriff-Substitute for proof.

Proof having been taken, the Sheriff-Substitute, on 18th March 1903, pronounced the following interlocutor:—"The Sheriff-Substitute finds that on 25th October 1901 the appellant, a miner in the respondents' employment, was working in their Sheriff-yard pit, Alloa; that in endeavouring to replace a hutch which had run off the rails he so exerted himself that injury was caused to his heart or his aorta; that immediately after the accident he received medical advice to rest; that he did not take complete rest, but that since that date he has, with frequent breaks, done a certain amount of light work, and that since the end of October 1902 he has been able to continue at light work in respondents' pit; that he is now totally incapacitated from work of the nature at which he was formerly employed; that he did not give notice of claim to the respondents until 24th March 1902; that thereby the respondents have been prejudiced in their defence: Therefore finds that these proceedings fall to be dismissed, with expenses."

"*Note.*—The Court of Session having decided upon a minute of parties that the circumstances set forth in Cond. 2 constitute an accident, proof was ordered that it might be ascertained as a matter of fact whether the applicant did sustain injury as alleged. There is no doubt that, by accident on 25th October 1901, the applicant's heart suffered a severe shock so as to disable him from work, at any rate of the heavy character to which he was accustomed. Having met with this accident his duty was, if he intended to take the benefit of the Workmen's Compensation Act 1897, to give notice as soon as practicable after the happening thereof (sec. 2). He did not give notice until 24th March 1902, five months later. He did not give notice at once, because he was advised that his injuries were not the result of an accident in the sense of the Act, and when he finally made his claim it was said on his behalf that 'he would not have made any claim had he made as satisfactory progress towards recovery as he expected he would do.' On his consulting, on the 25th October 1901, a medical man he was advised to take rest. He rested for three days and then returned to the pit, but found that he was not really fit even for light work. He continued very conscientiously to try to keep working, but had frequently to desist and rest, until now he finds that there is no probability of his ever being able to do heavy work. All the medical witnesses agree that the proper treatment for this man's injury was rest. Did this man rest as advised? Three out of four of these witnesses say they would have precluded him from work of any kind. He did not refrain from work. Therefore he did not rest in the sense in which these medical men understand the word. It is possible that with complete rest he might in time have been restored to his condition before the accident, and his incapacity have proved temporary. He has not returned to that condition, and it may be that his failure to rest is the cause. The interest of the defenders in this point is great. Had they been notified at an early date they would have been in a position to enforce complete rest on the part of the applicant, or at least could have warned him that his refusal to comply with medical advice was at his own risk. As the applicant, by want of early notice, has deprived the respondents of the opportunity of such supervision they have thereby been prejudiced in their defence, and these proceedings are not now maintainable."

On being asked to state a case for appeal, raising substantially the questions stated below, the Sheriff-Substitute refused to do

so, and on 21st May 1903 granted the following certificate of refusal:—"The Sheriff-Substitute having been moved in terms of minute for the pursuer to state a case for a decision of the Court of Session under the provisions of the Act of Sederunt of 3rd June 1898, section 9, sub-section (*c*), refuses to state a case on the ground that the questions of law proposed are not raised by the facts found by the Sheriff-Substitute to be proved." "I certify that on this date I refused on the grounds above set forth to state a case in terms of the Act of Sederunt of 3rd June 1898, sec. 9, sub-sec. (*c*)."

Rankin presented the present note in the Court of Session praying for an order on the Alloa Coal Company to show cause why a case should not be stated by the Sheriff.

In this note he set forth the following as the questions of law proposed to be argued:—"(1) Whether the respondents are bound to pay to the appellant a weekly payment during his incapacity after the second week from the date of said accident in respect of the foresaid period of twelve months succeeding said accident, not exceeding 50 per cent. of his average weekly earnings during the twelve months previous to the accident? (2) Whether, the appellant having been advised in error that his injuries were not the result of an 'accident' within the meaning of said Act, the failure of the appellant upon that account to give written notice of the accident as soon as practicable after the happening thereof was 'occasioned by mistake or other reasonable cause' in the sense of section 2 (1) of the Workmen's Compensation Act 1897? (3) Whether, upon the assumption that the want of notice consequent upon such erroneous advice was occasioned by 'mistake or other reasonable cause' the appellant is entitled to claim the statutory compensation?"

Argued for the appellant—The Sheriff should be ordered to state a case. The question whether the employers were prejudiced by want of the notice required by section 2 (quoted in rubric), and the question whether the failure to give notice was occasioned by mistake, were both questions of law—*M'Lean* v. *Carse & Holmes*, May 30, 1899, 1 F. 878, 36 S.L.R. 678; *Shearer* v. *Miller & Sons*, November 17, 1899, 37 S.L.R. 80; *Hobbs & Samuels* v. *Bradley*, March 14, 1900, 2 F. 744, 37 S.L.R. 532; *Holmes* v. *Mackay & Davis* (1899), 2 Q.B. 319, *per* Vaughan Williams, L.J., at p. 325.

Counsel for the respondents argued that no question of law had been raised before the Sheriff-Substitute, and cited *Rae* v. *Fraser*, June 28, 1899, 1 F. 1017, 36 S.L.R. 782; *Henderson* v. *Corporation of Glasgow*, July 5, 1900, 2 F. 1127, 37 S.L.R. 857.

LORD ADAM—For my part I think there has been miscarriage in this case. What the Act says about procedure in these cases is in the Second Schedule, section 14 (*c*)—"Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided for by the 52nd section of the Sheriff Court (Scotland) Act 1876." Now it appears to me that it was clearly the intention of the Legislature in this Act that these cases should be dealt with in most summary manner and disposed of at once—that the parties were to go with their witnesses to the sheriff, not sitting as sheriff but sitting as arbitrator, and that he should then and there dispose of the whole case. And it is to be remembered that this is not usual litigation—these are proceedings before an arbitrator who has power and is intended to act more summarily in these matters than when sitting as sheriff in his judicial capacity. Now, what have we had in this case? This is the second time the case has been before us. There was an appeal on a stated case upon what was called the relevancy of the complaint, and when the case came here I see that the appeal was sustained and the case sent back to the Sheriff. That is one appeal that there has been in this case, but then I see that in that case the Sheriff-Substitute found it unnecessary to dispose of the respondent's plea-in-law in respect of failure on the part of appellant to give timeous notice of his claim.

There is a case sent up for hearing on appeal on what they call the relevancy, and that being sent back, here we have a second proceeding—we have a reference to the judgment of the Sheriff on a plea beyond any that might arise on the relevancy. Now, if this case is sent back we may have a third appeal on other preliminary questions, and it may go back again for decision on the merits, and no decision has ever yet been pronounced on the merits in one way or another. So that here is a case that is meant to be disposed of in the most summary manner possible with any amount of proceedings already—two appeals and possibly a third—and we have never yet got a single decison or judgment of the Sheriff on the merits. Now, I do not myself think that that is the way in which it was meant these cases should be conducted. I think when these cases come before the Sheriff they should be disposed of. I see no difficulty in the way of disposing of them. The first question that might have occured here, and did occur, was the question whether the notice was sufficient. If the Sheriff thought it insufficient where was the difficulty in the Sheriff saying—"Assuming that I am wrong then I think so and so." The second question which was to be decided here was whether there was or was not any proper statement made, and if there was to be an appeal on that why could he not go on and dispose of the case on the merits on the assumption that he was wrong in the preliminary decision. Accordingly he might have said as one sees often—"Assuming my judgment on this is wrong and the man is entitled to damages, then in that view I assess the damages at so much." That would have settled the whole case. There is an appeal, and the appeal case comes up and can be disposed of once for all or sent back to the Sheriff if necessary. But in this procedure here we have had first an appeal on the relevancy, then an appeal on the question of notice, and then there may be an appeal on the merits; and I do not

think that is proper procedure at all. Therefore I must say I do not approve of the procedure that has been taken in this case, and I think that in it there has been a miscarriage.

Now, that being the position of the case, the question is—what are we to do with it? The second judgment which the Sheriff gives—though evidently and properly the whole case seems to have been gone into beforehand—the only thing he has sent to us is this, that the claimant did not give notice of the claim until 24th March 1902, and that thereby the respondents have been prejudiced in their defence. Was that a sufficient finding both in fact and in law to dispose of the whole case? It only disposes of a part of the case, because nobody can get behind that. It is quite true that if notice be not given till such a time as to prejudice the respondents in their defence, that may be a good defence, but it is impossible for us to say on the proceedings in this case that there was no answer which might have been made in fact to that, viz., this, that assuming that this late giving of notice arose from mistake or reasonable cause, then the mere fact that it might prejudice to some extent the respondents' defence was no reason why the arbitrator should not have gone on to consider the merits of the case. The question whether the failure to give notice was caused by mistake was before the Sheriff. The first mistake which the workman said he had committed was that he had been wrongly advised in law as to his rights. That may or may not amount to a mistake sufficient in terms of the statute to remove the objection arising from late notice; but it is quite obvious there was another mistake on the part of the man—a mistake of quite a different nature—a mistake namely as to the effects of the injury upon him. There have been no facts found as to that with which we have to do—whether or no this man was in the honest belief that his accident was of such a character that he would in a short time be capacitated for work. Having been for over thirty years in the respondents' employment he did not want to make any claim against them, but when he found, as was not disputed, that it was not a slight injury but a serious injury, and that he was under a mistake as to its extent, he then returned to make a claim. That may or may not be. The facts are stated, but what the Sheriff believed is not stated. There is no question unless whether there was reasonable cause or no for not giving notice. Now, we have no material for enabling us to settle that question. I think, as I said before, that there has been a miscarriage in this case, and that we should send it back with instructions to the Sheriff to state the whole relevant facts of the case as he finds them proved, and that he dispose of the whole case.

LORD M'LAREN—I agree entirely with Lord Adam. I think there is no such contention contemplated in the Act as a dispute upon relevancy before the facts have been ascertained. The parties are to come before the arbitrator with their witnesses, prove their case as far as they can, and then an exhaustive judgment is to be pronounced subject to review, and if the Act is properly worked there ought never to be a possibility of two appeals in the same case. Of course none of us are perfect administrators, and it might sometimes happen that there would be two appeals, but in the ordinary course of things each case should be so conducted that one appeal would exhaust the case, and leave nothing to be done but to apply the decision by finding the sum of compensation which had been already ascertained. But if these arbitrations are to be dealt with like actions in which a record is made up, there might be many appeals, because, for example, if you look at the interpretation clause you might under relevancy have a question whether the work described was on a railway, factory, or engineering work. Secondly, you might have a question whether the person sued was the employer. Thirdly, whether the person making the claim satisfied the definition of workman. Of course, he must be a person engaged in manual labour. And then you might have a question of relevancy as to who are the defenders. Then having got over these difficulties you would come to pleas in bar, such as the want of notice, or misconduct on the part of the workman, and finally reach a stage which ought in my view to be the first thing to start with—what is the proper amount of compensation to be paid to the petitioner assuming that he has a claim.

Now, it may perhaps be a little inconvenient to the parties in this case to have another remit and an amended case, but in view of the importance of the question with regard to other cases I think the course proposed by Lord Adam is the right one, and that we should have a case stated by the Sheriff - Substitute in which all the facts are stated necessary to the decision of the case, not only on the supposition that his view as to the notice is right, but also on the supposition that it may be wrong, because when a case is stated for appeal the Judge appealed from must necessarily contemplate that his decision may be reversed, and thus to save expense and trouble to the other party he should state what is the sum of compensation that he will be prepared to award if the Court take a different view from him on the legal question on which he has given his decision.

LORD KINNEAR—I entirely agree. It appears quite clearly on the face of the Sheriff's interlocutor and note that there are questions of law with reference to the validity of the notice given by the workman which are fit for the consideration of this Court. I do not think it doubtful that the question whether the employers have suffered prejudice in their defence within the meaning of the Act by the want of notice, and whether the failure of the workman to give notice was "occasioned

by mistake or other reasonable cause" within the meaning of the Act are questions which the complainer was entitled to raise, and if necessary to bring here for review. It is said with some plausibility that these are questions of fact. So they are if they are considered with exact reference to the provisions of the Act correctly construed. But whether the facts in a particular case answer to a definition in a statute is a question of the construction of that statute, and is therefore an appropriate question for review. Therefore I think that if the claim for compensation were dismissed on the ground stated by the Sheriff there would be at least a very serious risk of a miscarriage of justice. I do not say definitely that I think the Sheriff's judgment is wrong, because we do not know that we have all the determining facts before us. But I think it clear that the decision on the grounds stated raises questions on the construction of the statute which the appellant is entitled to bring before this Court, and therefore that the Sheriff ought to state a case for our judgment. But then I also agree with Lord Adam and Lord M'Laren on the further question as to the course of procedure taken in the present case. The procedure which the Act intended to be followed is quite clearly brought out by the provisions of section 2 with reference to notice of claim. I do not think it was intended that there should be a separate record made up upon every preliminary point that may be taken, and that a series of appeals should be taken against successive judgments upon preliminary objections before the merits have been reached at all. The Act, after providing that want of notice shall be a bar to compensation, adds this proviso, that want of notice shall not be a bar if it is found in the course of the proceedings for settling the claim that the employer is not prejudiced. It is plainly intended that whether there is an objection to the notice or not the proceedings are to go on, because it is in the course of the proceedings that it is to be found whether the employer's defence has been prejudiced or not. I agree with Lord Adam as to the proper course of procedure in these cases, and I think that a remit should be made in the terms suggested by his Lordship.

I think with Lord M'Laren that it is unfortunate that the parties should be subjected to further procedure. But it would be a denial of justice if the appellant were refused an opportunity for stating his case, and it is certainly no fault of his that it has not been brought before us in a shape in which we can finally dispose of it.

The LORD PRESIDENT concurred.

The Court pronounced this interlocutor—

"The Lords having considered the note for the appellant and the answers thereto, and heard counsel for the parties, Remit to the Sheriff to state a case setting forth the facts found by him to be admitted or proved relative to the question whether the respondents were or were not prejudiced in their defence by any want, defect, or inaccuracy in the notice given by the appellant, and also relative to the question whether such want, defect, or inaccuracy was or was not occasioned by mistake or other reasonable cause on the part of the appellant, and also his judgment thereon: And further recommend to the Sheriff, if required by either of the parties, to include in such case any question of law arising out of the facts found by him to be admitted or proved relative to the merits of the claim and his judgment thereon, if the Sheriff shall consider such question of law proper to be appealable to this Court: And further, in the event of his judgment being adverse to the appellant, recommend to the Sheriff to note the amount of compensation which he would have awarded to the appellant on the assumption that the appellant was entitled to compensation."

Counsel for the Appellant—Watt, K.C. —Wilton. Agent—P. R. M'Laren, Solicitor.

Counsel for the Respondents—Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Thursday, July 16.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary

LEVY *v.* JACKSON.

Statute—Applicable to Scotland or not—Act to Amend the Law concerning Games and Wagers (8 *and* 9 *Vict. c.* 109)—*Gaming Act* 1892 (55 *Vict. c.* 109.)

Held that the "Act to amend the law concerning Games and Wagers" (8 and 9 Vict. c. 109), and the Gaming Act 1892 (55 Vict. c. 9) do not apply to Scotland.

The "Act to amend the law concerning Games and Wagers" 1845 (8 and 9 Vict. c. 109) enacts that "All contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void, and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made." The provisions of the Act with reference to its enforcement, the officials by whom it is to be enforced, and the procedure to be followed in enforcing it, refer to the law and practice of England and Ireland, and the 15th section of the Act repeals in whole or in part the provisions of certain earlier Acts, including Acts of the Parliament of Ireland. The Act contains no express reference to Scotland,