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,

and there is no adaptation of its terms to the law and practice of Scotland.

The Gaming Act 1892 (55 Vict. c. 9), entitled "An Act to amend the Act of 8 and 9 Vict. c. 109," enacts — sec. 1 — "Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the Act 8 and 9 Vict. c. 109, or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract, or of any services in relation thereto, or in any connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sums of money."

This was an action at the instance of Charles Levy, commission agent, 28 Regent Street, London, against John Jackson, writer, 83 West Regent Street, Glasgow, in which the pursuer sought to recover from the defender a sum alleged to be due by him as the balance still owing of certain advances, being sums paid by the pursuer on behalf of the defender.

In answer the defender averred—"The sum sued for consists of the alleged balances due on betting transactions between the pursuer and defender, and is in any case irrecoverable both at common law and under the Act 55 Vict. cap. 9."

The pursuer pleaded—"(1) The pursuer having advanced the principal sum sued for on behalf of and at the request of the defender, he is entitled to reimbursement thereof as concluded for."

The defender pleaded—"(1) The pursuer's statements are irrelevant, and insufficient to support the conclusions of the summons. (3) In any case the sum sued for is irrecoverable, in respect that it arises upon betting transactions."

On 22nd May 1903 the Lord Ordinary (STORMONTH DARLING) pronounced an interlocutor whereby he repelled the first plea-in-law for the defender and allowed the parties a proof of their averments.

Opinion.—"The defender founds on the Act 55 Vict. c. 9, as excluding the action. The pursuer replies that there is nothing in the condescendence to raise this plea; but the defender has sufficiently challenged the pursuer as to the nature of the transaction between them, and the pursuer does not deny, either on record or at the bar, that these were betting transactions. Accordingly the question comes to be whether the Act of 1892 applies to Scotland.

"I decided in the case of *Russell* (1 S.L.T., No. 533) that the Act did not apply, because the Act of 1845 which it purported to amend did not apply. My judgment not having been reclaimed, I am bound (and very willing) to reconsider the question, particularly as I find that so able a judge as the late Sheriff Berry came to a different conclusion a few years later, without, however (so far as the report bears) having had his attention directed to my judgment or the grounds of it. But I remain of the opinion which I expressed in 1894, for the reasons stated in *Russell's* case.

"One argument I ought to notice, because I do not think it was urged in *Russell's* case. It is said that though the old Act did no more than the common law of Scotland did, and therefore might fairly be held to be inapplicable to that part of the kingdom, the new Act goes further, and therefore ought to be held applicable. I assume that the new Act goes farther than the common law of Scotland; but the question really is, whether Parliament can be supposed to have intended the application of the amending Act to Scotland, when not only the title of it but the only enacting clause which it contains bears exclusive reference to contracts rendered null by an Act which (I now assume for the purposes of this argument) did not apply to Scotland. I answer that question in the negative. I cannot conceive an amending Act so carefully limited being intended to have a wider territorial ambit than the Act which it amends."

The defender reclaimed, and argued—The action was excluded by statute. The Act of 1845, though it contained clauses which applied expressly to England and Ireland, was not in terms limited to those portions of the kingdom, and was therefore a general Act. It had been assumed to apply to Scotland—*Foulds* v. *Thomson and Another*, June 10, 1857, 19 D. 803. At least the amending Act of 1892 was general and applied to Scotland. (Counsel adopted the observations of Sheriff Berry in the case of *M'Sorley* v. *Muirhead*, March 30, 1897, 5 S.L.T. 7.)

Counsel for the respondent was not called upon, but stated, in reply to a question from the Bench, that the pursuer had acted as an agent in betting transactions between the defender and the person to whom the sums now sought to be recovered had been paid.

LORD JUSTICE-CLERK — On the question whether the Act 8 and 9 Vict. c. 109, applies to Scotland I have really no doubt. The question has come before the Court in several cases, but it was not necessary to decide it in any of these cases, because the parties were willing that the discussion should be taken on the footing that the Act applied to Scotland. *Dicta* were expressed on the Bench—some in one way, some in the other—but there was not full argument or careful consideration of the question. I am of opinion that the Act does not apply to Scotland. I do not think that from beginning to end there is anything in the Act to suggest that it should apply to Scotland. As regards officials, procedure, terminology, it has in view the law and practice of England and Ireland only. That it applies to Ireland is plain from the provisions of the 15th section. But the Act contains nothing which refers to or suggests a reference to the law and practice of Scotland. Now, is there anything in the Act of 1892 to show either that that Act or that both Acts may extend to Scotland. I am unable to find anything of that sort. There are obvious reasons why the Act of 1845 should not extend to Scotland, because the common law of Scot-

land was quite sufficient to effect the purposes of that Act. If it had been intended that the Act of 1892, which is described as an Act to amend the Act of 1845, should apply to Scotland, I think that it would have contained clauses making the provisions of the Act applicable to Scottish practice and procedure. At the date of the later Act that had come to be the almost invariable rule. On the whole matter my opinion is that neither Act applies to Scotland.

LORD TRAYNER — I am of the same opinion. I do not think that the Statute of 1845 applies to Scotland. In the first place, it was unnecessary that it should do so, because the common law of Scotland was already that which by this statute was made the law of England. In the second place, it is plain that the procedure and method of administration prescribed by the Act for carrying it into effect apply only to England and Ireland, no provision being made for its application according to Scotch procedure.

With regard to the Act of 1892, I agree with the Lord Ordinary that it merely amends the Act of 1845. It is entitled "An Act to amend," &c. This is not conclusive, but although the title of an Act is not necessarily a part of it, yet we cannot disregard it altogether. If this is an amending Act, then I agree with the Lord Ordinary that an amending Act cannot be extended beyond the limits of the Act which it amends.

LORD MONCREIFF—I agree with your Lordships and with the Lord Ordinary that neither the Act of 1845 nor the Act of 1892 apply to Scotland. The reason why there has been no definite decision upon the question up to this time probably is that section 18 of the Act of 1845 is in accordance with the common law of Scotland. But we now have to decide whether these Acts apply to Scotland, and I have no hesitation in saying that they do not.

In the Act of 1845 there is no express exclusion of Scotland, but the phraseology of the Act is applicable exclusively to England and Ireland with regard to procedure and with regard to the persons by whom and the Courts in which the Act is to be enforced. There is no reference to any procedure in Scotland.

When we come to the Act of 1892 we find it described in the title as "An Act to amend the Act of 8 and 9 Vict. c. 109, entituled 'An Act to amend the law concerning Games and Wagers,'" and the single enacting clause deals with contracts or agreements struck at by the Act of 1845. It simply amends the law applicable to England and Ireland. I have no hesitation in agreeing with your Lordships.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Pursuer and Respondent —M'Clure—Mackintosh. Agents—Patrick & James, S.S.C.

Counsel for the Defender and Reclaimer —Constable. Agents—Wallace & Pennell, W.S.

HIGH COURT OF JUSTICIARY.

Tuesday, March 24.

CIRCUIT COURT, DUMFRIES.

(Before Lord Young.)

HIS MAJESTY'S ADVOCATE *v.* HODKINSON AND MORTON.

Justiciary Cases — Fraud — Relevancy — Fraudulent Telegrams—Betting—Cipher.

An indictment set forth that A, a telegraph clerk, and B, "having devised a fraudulent scheme to fabricate telegrams, pretending to make *bona fide* bets on horse races and to send such telegrams after the races to which they referred had actually been run, in pursuance of said scheme" had (1) sent certain code telegrams, printed in a schedule to the indictment, pretending that these had been handed in for transmission, whereas they had been retained by A until he knew the result of the races, and had thereafter been altered by him by the erasure of a word or words and the substitution of a different word or words; and (2) had sent certain telegrams bearing the Post-Office code letters indicating that the telegrams had been handed in for transmission at certain hours, whereas they had been handed in at hours other than those indicated by the code letters, and had by such means induced C, a turf accountant, to whom the telegrams were sent, to pay certain sums, and attempted to induce him to pay certain other sums to B, and did defraud C of a certain sum of money, and attempt to defraud him of another sum. There was no averment that any bet had been made, and the telegrams were unintelligible except to those conversant with the code, and no translation of them was given. *Held* that the indictment was irrelevant.

Justiciary Cases — Post Office Offence — Relevancy — Wilfully and without Due Authority Altering Telegrams—The Post Office Protection Act 1884 (47 *and* 48 *Vict. c.* 76), *sec.* 11—*The Post Office Offences Act* 1837 (7 *Will. IV. and* 1 *Vict. c.* 36), *sec.* 36.

The Post Office Protection Act 1884 (47 and 48 Vict. cap. 76), sec. 11, enacts—"Every person who forges or wilfully and without due authority alters a telegram or utters a telegram knowing the same to be forged, or wilfully and without due authority alters, or who transmits by telegraph as a telegram, or utters as a telegram, any message or communication which he knows to be not a telegram, shall, whether he had or had not an intent to defraud, be guilty of a misdemeanour."

The Post Office Offences Act 1837