Judges. In the case of the *Liverpool Railway*, which was decided before the passing of the Lands Clauses Consolidation Act for England, but which was decided on a private Act, in which rights of compensation were expressed in very much the same terms, it was held that the probability of the non-renewal of a lease in virtue of a promise made to that effect by the landlord, but without any covenant for renewal, was not a proper subject for compensation, and in support of the claim for compensation the Hungerford Market cases were cited, but Lord Denman points out the distinction when he says this interest is merely a hope of renewal. It is different from the cases under the Hungerford Market Act, because the words in that statute antecedent to "goodwill" were sufficient to cover the legal interest, and therefore there must be ascribed to the word "goodwill" some meaning that would cover an interest outside the legal interest, such as the chance of obtaining some other benefit after the legal interest had come to an end. I think that the two cases to which I have last referred in contrast with the Hungerford Market cases are authorities for holding that so far as compensation under the Lands Clauses Act is concerned it is necessary that the party claiming should show a legal interest; and in the second place, a claim for what is called goodwill as against the landlord is not a legal interest at all which can be compensated. The Lord Ordinary suggests that the reference may be enlarged by the terms of the nomination of arbiters. If the umpire had considered these terms in the way in which the Lord Ordinary suggests these may be construed, and had decided absolutely that the claimant was entitled to compensation for the loss of a hope of renewal, then a question would have arisen whether the submission was to be governed by the terms of the Lands Clauses Compensation Act, or whether the *fines compromissi* had been extended by the terms of the claimant's nomination of an arbiter. If it could have been held that there was a larger reference to the arbiters and the oversman than the Lands Clauses Consolidation Act contemplated, which as at present advised I must say I should have great difficulty in holding, then an argument might have been raised by the claimant that the arbiter's decision on that point of law was final, and that the Court could not interfere. But no question of that kind can arise in the present case. No question can arise even as to what the *fines compromissi* are, or whether the terms of the nomination enlarged the subject for arbitration, because the arbiter has not decided the question, but on the contrary, following the course which was pointed out by Lord President Inglis as a proper one for an arbiter to take in such circumstances, he has given an alternative award, and has left the question we are now considering open to the decision of the Court. By the terms of the award the question is open. That award is accepted by both parties, and therefore I agree in thinking that the only question we have to consider is whether the Lands Clauses Consolidation Act and the Glasgow Act with which it is incorporated give a legal claim for compensation in respect of the hope or chance of a renewal of the lease in question. I think they do not, for the reasons which have been stated by the Lord President.

Both parties moved for expenses.

Counsel for the pursuer and respondent argued that the action was incident to the arbitration, and therefore that the expenses should be borne by the promoters, under section 32 of the Lands Clauses (Scotland) Act 1845 (quoted in rubric).

The Court decerned in favour of the pursuer for £800; *quoad ultra* assoilzied the defenders from the conclusions of the action, and found the pursuer liable in expenses.

Counsel for the Pursuer and Respondent—Wilson, K.C.—Crabb Watt, K.C.—Adamson. Agents—W. & J. L. Officer, W.S.

Counsel for the Defenders and Reclaimers—Ure, K.C.—J. R. Christie. Agents—Simpson & Marwick, W.S.

Friday, July 17.

FIRST DIVISION.

[Sheriff-Substitute at Glasgow.

COWIE *v.* DIEZ.

Process—Appeal for Jury Trial—Proof or Jury Trial—Amount of Damages Sole Question at Issue.

In an appeal for jury trial in an action brought in the Sheriff Court at the instance of a stevedore against the owners of a ship, concluding for damages for personal injury resulting from an accident at Glasgow docks, the defenders admitted their liability for the accident, and the only question remaining was the amount of damages. The defenders moved that the case should be remitted for proof in the Sheriff Court. The pursuer opposed this motion on the ground that the case was suited for trial by jury, and that the amount of damages was eminently a jury question. The Court *ordered* issues.

John Cowie, foreman stevedore, 16 North Avenue, Govan, raised this action against Captain Manuel Diez, captain of the steamship "Rui Perez," concluding for £300 as damages for personal injury sustained by him while working on the said ship in Glasgow harbour.

On 24th March 1903 the Sheriff-Substitute (BALFOUR) allowed a proof, and the pursuer appealed to the Court of Session for jury trial.

On the motion of the defender the case was sent to the Summar Roll. The defender put in a minute admitting liability for the accident from which the pursuer's injury resulted, but not making any tender.

On the case being called, the defender argued that it should be remitted to the Sheriff Court for proof, on the ground that the sole question now remaining was the amount of damages, and that all the witnesses would be Glasgow men—*Bethune* v. *Denham*, March 20, 1886, 13 R. 882, 23 S.L.R. 456; *Mitchell* v. *Sutherland*, January 23, 1886, reported as a note to *Bethune*, and 23 S.L.R. 317; *Nicol* v. *Picken*, January 24, 1893, 20 R. 288, 30 S.L.R. 342; *Pollock* v. *Mair*, January 10, 1901, 3 F. 332, 38 S.L.R. 250.

Argued for the pursuer—The case should go to a jury. Appeals under the Judicature Act were in the same position as cases instituted in the Court of Session in a question of proof or jury trial—*Crabb* v. *Fraser*, March 8, 1892, 19 R. 580, 29 S.L.R. 445; *Willison* v. *Petherbridge*, July 15, 1893, 20 R. 976, 30 S.L.R. 851; *Donnachie* v. *Thom*, December 15, 1892, 20 R. 210, 30 S.L.R. 201; *Rhind* v. *Kemp & Co.*, December 13, 1893, 21 R. 275, 31 S.L.R. 223; *M'Intosh* v. *Commissioners of Lochgelly*, November 3, 1897, 25 R. 32, 35 S.L.R. 50; *Jamieson* v. *Hartil*, February 5, 1898, 25 R. 551, 35 S.L.R. 450. The only ground here suggested for trial in the Sheriff Court was that the witnesses would all be local, but that had never been held to be a sufficient ground for refusing jury trial—*Tosh* v. *Ferguson*, October 27, 1896, 24 R. 54; *Walker* v. *Knowles & Son*, January 8, 1902, 4 F. 403, 39 S.L.R. 291; *Dunn* v. *Cuninghame*, July 9, 1902, 4 F. 977, 39 S.L.R. 755. The question at issue—the amount of damages—was eminently suited for jury trial.

At the close of the argument the case was continued to allow the defender to put in a tender. He tendered £60, which was refused.

At advising—

LORD PRESIDENT—On considering this case I do not think there is any specialty which should prevent it following the ordinary course of trial by jury.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court ordered issues, and found the respondent liable in expenses, modified at £3, 3s.

Counsel for the Pursuer and Appellant—Watt, K.C.—Munro. Agents—Patrick & James, S.S.C.

Counsel for the Defender and Respondent—R. S. Horne. Agents—Webster, Will, & Company, S.S.C.

Friday, February 20.

SECOND DIVISION.

[Lord Pearson, Ordinary.

BOYD *v.* HYSLOP.

Expenses—Compearing Defender Held not Liable for Expenses Caused by Calling non-Compearing Defenders.

In an action brought by a hotelkeeper complaining of certain deliverances of Petty and Quarter Sessions at meetings for granting and renewing certificates, the pursuer concluded for reduction of the deliverances and of the certificate issued to him, and for delivery of a renewal certificate, or alternatively for decree ordaining the justices to hold such meetings and do such things as should be necessary for the determination of the matter. He called not only the justices present at the meetings, but also the whole justices of the county. Defences were lodged by two justices only, one of whom had been present at the Petty Sessions and the other at the Quarter Sessions. The pursuer obtained decree under his first alternative conclusion. He did not take decree in absence under his alternative conclusion. *Held* (*rev.* Lord Pearson, Ordinary) that the compearing defenders were not liable for the expense of citing the whole justices of the county—*per* Lord Justice-Clerk and Lord Trayner, on the ground that in the circumstances such citation was not necessary; and *per* Lord Moncreiff, on the ground that the pursuer concluded for expenses against those of the defenders only who should appear, and thus deprived the compearing defenders of any claim of relief against the non-compearing defenders.

This was an action at the instance of Robert Boyd, hotelkeeper, in which the pursuer complained of certain proceedings at meetings of justices for granting and renewing certificates.

The only question decided by the Inner House was one as to the liability of the compearing defenders, who were unsuccessful, for the expense of calling certain other defenders who did not appear.

The pursuer had been the keeper of a licensed hotel at Sorn in Ayrshire. On 16th April 1901 he applied to the half-yearly meeting of justices held at Cumnock for a renewal of his hotel certificate. The justices granted the renewal "for six days' licence only," notwithstanding the pursuer had not applied to them for such a certificate. The pursuer having appealed to a meeting of Quarter Sessions held on 28th May 1901, that meeting, without sustaining the appeal, resolved that the pursuer's hotel certificate be reduced to a public-house certificate, and granted him a public-house certificate accordingly.

The defenders called by the pursuer in the present action were (first) William Hyslop of Bank, New Cumnock, and others, being the Justices of the Peace for the county of Ayr who attended and acted at the district half-yearly licensing meet-