of both parties—and this is provided for by an examination by a medical referee selected by a public authority. But in this case the parties do not differ upon any question as to the suitability of the medical practitioner. The respondent is quite willing to submit himself to examination by a doctor selected by the employer if the employer will either appoint a doctor in Ireland or pay the workman's expenses of going to Glasgow to be examined, and therefore I cannot hold that there has been any obstruction to an examination any more than that there was a refusal to submit himself. I would only add this, that while under the obligation to provide and pay for medical examination, I think the duty is put upon the employer of bringing the medical practitioner to the place if he is not resident in the vicinity of the workman's home—this must always be construed with regard to professional usage and etiquette. If, for example, a statute directed the person to submit himself to examination upon the facts of the case by a legal commissioner appointed by the Court or the Sheriff, I should hold that it was the duty of the workman, if health permitted, to attend on the commissioner, because it is the usage of the profession that a party who is to be examined always goes to the judicial authority. If the injury is not of a disabling kind—if it does not prevent the man walking to the doctor's residence—then I think he must do what all other patients do, go to the doctor if able to do so, though doctors are always willng, if there is the slightest need for it, to attend at the house of the patient. But where the doctor is at a distance, then I think the case is different, because I could not stretch the code of medical practice further than that a man may be required to attend at the medical practitioner's house where he is a resident practitioner. But that does not imply any duty on the part of the workman to travel at his own expense in order to be examined by a medical practitioner at a distance from the place where he is residing.

LORD KINNEAR—I quite agree with your Lordships and the Lord Ordinary. My only doubt is whether it might not be sufficient to substitute for the somewhat numerous findings of the Lord Ordinary the respondent's own way of putting his case, which I think is perfectly satisfactory, as it is embodied in the second plea-of-law. The ground of judgment in my opinion is quite well stated there. "The respondent not having refused to submit himself to medical examination, and not having obstructed the same, the complainers were not entitled to suspend the weekly payments of compensation due to him." I think that both of these two propositions in fact which form the basis of the plea are perfectly well made out for the reason your Lordships have already given. The respondent submitted twice to examination. So long as he was in the same place as the medical man, and the complainers desired to have him examined, he made no difficulty. He was called on to submit to examination on 16th December 1903. He was called on to do so again on 24th March 1904, and again submitted himself, and the only occasion on which he has declined to come to the doctor for examination is the occasion on which he was asked to come from Ireland to Glasgow, or to a place in Dumbartonshire, at his own expense, in order to be examined by this medical practitioner. I agree that it was not reasonable to ask him to do so, and therefore the complainers have not satisfied the obligation laid on them by the statute in order to enforce his attendance, which is, that they have in a reasonable sense "provided" a doctor by whom he is to be examined. I think the distinction between the present case and the case of *Finnie* is perfectly obvious, and it is quite rightly pointed out by the Lord Ordinary when he says that in *Finnie's* case the man had gone to Australia without leaving his address with anybody, leav his wife at home, and neither his wife nor his former law-agents were able to find out where the man had gone to. That was held to be an obstruction to the operation of the statute, because it was impossible to find out the man and make any provision for examination. But in the present case there would not have been the slightest difficulty in the employer discovering a qualified practitioner where the workman was living, or if they could not find a qualified practitioner at the place where he was living, they could have found one within a reasonable distance. I think that in asking the respondent to come from Ireland to Glasgow at his own expense the employers were making an unreasonable demand.

The Court adhered.

Counsel for Complainers and Reclaimers—Campbell, K.C.—Lippe. Agents—W. & J. Burness, W.S.

Counsel for Respondents—Watt, K.C.—A. M. Anderson. Agents—Balfour & Manson, S.S.C.

Tuesday, January 31.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

TONI TYRES, LIMITED *v.* THE PALMER TYRE, LIMITED.

Jurisdiction—Preventive Jurisdiction—Interdict—Wrongs Committed in Scotland by English Company—Jurisdiction of Court of Session to Interdict a Foreign Wrongdoer from Continuing to Commit Wrongs in Scotland—Jurisdiction Independent of Arrestment or Personal Service in Scotland—Forum non conveniens.

An English company brought a suspension and interdict against another English company, craving interdict against the respondents infringing within Scotland certain patent rights of the complainers which, it was

averred, were being infringed there by the respondents. No arrestments had been used to found jurisdiction, nor had personal service been made upon the respondents in Scotland. The respondents denied that they had any place of business in Scotland, and that they had infringed the alleged patent rights of the complainers, and pleaded (1) no jurisdiction, and (2) *forum non conveniens.*

Held (*aff.* judgment of Lord Stormonth Darling) (1) that in an action *ratione delicti* the Court had jurisdiction to prevent repetition by a foreigner of alleged wrongous acts by him within Scotland; and (2) that the Court was the appropriate *forum* before which to bring an application for interdict against the continuance of the alleged wrongdoing within Scotland.

This was a note of suspension and interdict at the instance of Toni Tyres, Limited, incorporated under the Companies Acts 1862 to 1900, and having its registered office at 212 Shaftesbury Avenue, London, with consent and concurrence of Francesco Toni, 56 Berners Street, London, and the said Francesco Toni, against the Palmer Tyre, Limited, having its registered office at 15 Martineau Street, Birmingham, designed as carrying on business in London, and at 8 Buchanan Street, Glasgow.

The complainers craved the Court to interdict the respondents from manufacturing, selling, disposing, or using within Scotland any pneumatic tyres with wheel rims and means of attaching pneumatic tyres to wheel rims, made in accordance with the invention described in the specification filed relative to certain letters-patent, dated 13th August 1903, granted to the complainer Toni, and from infringing the patent rights of the complainers within Scotland.

(The interdict originally craved in the prayer of the note extended to Great Britain and Ireland, but by an amendment made in the Procedure Roll it was limited to Scotland.)

The complainers, after setting forth the nature of the invention for which they held the patent, averred that the respondents "were at the date of the presentation of the note exhibiting and offering for sale tyres with wheel rims and flanges of a similar description at a motor and cycle show being held in the Waverley Market, Edinburgh. They had a stall at that show with a large signboard bearing the respondents' name. They had there a large supply of tyres and tyre attachments and other goods, and they solicited and took orders there for the sale thereof. They also distributed their catalogues at the show and throughout Scotland, and they offered for sale tyres and rims made according to the said flange attachment to many persons at the show and also throughout Scotland, by correspondence and otherwise."

The complainers further averred as follows:—"The respondents carry on business at 8 Buchanan Street, Glasgow. Their name is on a brass plate at the side of the entrance door. They keep a stock of Palmer tyres and other goods there for sale. Orders sent to them there are executed by them, and invoices are sent out to the purchasers, in name of the respondents. They announce in their trade catalogues that they have a branch depot there, and also a registered telegraphic address, viz., 'Silvergray, Glasgow,' and that they are on the telephone in Glasgow at that address. They are entered in the Glasgow Post Office Directory, with their sanction, as having a warehouse there. In point of fact, they are on the telephone in Glasgow, and have a postal, telegraphic, and telephonic address at 8 Buchanan Street there. The note of suspension and interdict was served on the respondents there, and also at the registered office of the company, and a copy sent to their known agents."

In their answers the respondents admitted that they had adopted a flange attachment of tyres which they had exhibited in Edinburgh. They denied, however, that they had in any way infringed the rights of the complainers under their alleged letters-patent.

They further averred as follows:—The respondents have no office or place of business in Scotland, and are not subject to the jurisdiction of the courts of Scotland. In particular, they have no office or place of business at 8 Buchanan Street, Glasgow, where the pretended intimation or service of the present note of suspension and interdict was made. In any event the courts of Scotland are not a convenient *forum* for adjudicating upon the subject-matter of the present action. The complainers and respondents are both English companies, and are both subject to the jurisdiction of the English courts, in which the respondents are ready and willing to answer any writ or action which the complainers may bring against them with reference to the subject-matter of the present process. Further, all or nearly all the necessary witnesses, and the whole documents, plans, models, &c., relative to the case, are in England, the courts of which country accordingly afford the most convenient *forum* for the adjudication of all questions arising under the present action."

The complainers pleaded, *inter alia*—"(1) The respondents are subject to the jurisdiction of the Court, in respect that—(1st) At the date of presentation of the note they were carrying on business in Scotland, and had a warehouse, branch depot, postal, telegraphic and telephonic address at 8 Buchanan Street, Glasgow. (2nd) At said date they were offering for sale at a stall in the exhibition in Edinburgh tyres and attachments made in contravention of the complainers' patent, and by the circulation of their trade catalogues and by correspondence they were offering such for sale in Scotland generally. (3rd) The Court in Scotland is the proper Court to grant interdict within Scotland against the continuance of the wrongdoing complained of."

The respondents (in addition to their pleas on the merits) pleaded—"(1) No jurisdiction; and (2) *Forum non conveniens.*"

On 15th November 1904 the Lord Ordinary (STORMONTH DARLING) repelled the first and second pleas-in-law for the respondents,

and allowed the parties a proof of their averments.

Opinion.—"The averment that the respondents are subject to the jurisdiction of this Court in respect of their having a place of business in Scotland is certainly rather bare. At the same time in a proceeding of this kind it is probably sufficient, for I read it as meaning that the respondents have a right to the possession of heritage in Scotland. If that had been the only ground of jurisdiction averred I should at present have limited the proof to the question of jurisdiction. As it is I am not prepared to restrict the proof in that way if the complainers are ready to amend their prayer so as to limit the scope of the interdict craved to Scotland. The remedy sought is purely preventive. It is not petitory or declaratory. It is directed purely to prevent the respondents repeating a delict or *quasi*-delict which the complainers say the respondents have in the past committed in Scotland. In an action *ratione delicti* for the purpose of preventing the repetition of a delict I cannot doubt that the courts of the territory have jurisdiction over a foreigner though he is not found within the territory. It is necessary he should be so found when the ground of the action is founded on contract, but not when the ground is a delict or *quasi*-delict and the remedy asked is purely preventive. *Waygood's* case is authority for that, and it is not inconsistent with the other judgments cited, such as *Kermick* v. *Watson*, where the *quasi*-delict was a slander, and where the jurisdiction of the Sheriff would not have been sustained if the defender had not been served within the county, for the jurisdiction of the Sheriff over foreigners on this ground never extends to the case where the foreigner is not cited within the sheriffdom. The cases are therefore not inconsistent, and the principles of international law are in favour of allowing jurisdiction though there has been no personal service within the country."

The respondents reclaimed, and argued—(1) *On the Question of Jurisdiction*—The respondents were an English company and were not subject to the jurisdiction of the Court. They had no place of business in Scotland. The mere fact of transacting business there was not sufficient—*Laidlaw* v. *Provident Plate Glass Insurance Co., Limited*, February 28, 1890, 17 R. 544, 27 S.L.R. 354. To constitute jurisdiction against a foreigner who had no place of business in Scotland it was essential that he be duly convened by personal service within Scotland—*Sinclair* v. *Smith*, July 17, 1860, 22 D. 1745; *Longworth* v. *Hope*, July 1, 1865, 3 Macph. 1049; *Kermick* v. *Watson*, July 7, 1871, 9 Macph. 984, 8 S.L.R. 628; *Parnell* v. *Walter*, February 5, 1889, 16 R. 917, 27 S.L.R. 1; *Maxwell* v. *Horwood's Trustees*, January 30, 1902, 4 F. 489, 39 S.L.R. 341. The case of *Waygood* v. *Bennie*, February 17, 1885, 12 R. 651, 22 S.L.R. 413, relied on by the respondents, was exceptional. In that case leave was granted by the English court to serve the writ in Scotland; it was a case of statutory service. The real question at issue here was the validity of the patent. Both parties were English, and there was no previous instance of two English parties trying the validity of a patent in Scotland. The preventive jurisdiction against wrongdoing on which the complainers founded was limited to and could only be exercised by the Bill Chamber, and if the preventive jurisdiction of the Bill Chamber were now to be extended to the Court of Session the result would be a sweeping assertion of jurisdiction by the Court. The preventive remedy granted in the Bill Chamber was summary, and was given on the spot whether the wrongdoer was domiciled in Scotland or not. It was purely an interim remedy, and the summary jurisdiction which it exercised was quite inappropriate for determining questions of right. The mere fact of "passing the note" did not confer any jurisdiction on the Court of Session to deal with the merits of the case—A.S. 24th December 1838 (Bill Chamber Proceedings). (2) *As to the Plea of Forum non conveniens*—The case would be more suitably tried in the English courts. Both parties were resident there; evidence of infringement was equally available there; and the remedy sought could be obtained there—*Tulloch* v. *Williams*, March 6, 1846, 8 D. 657; *Williamson* v. *North-Eastern Railway Co.*, February 28, 1884, 11 R. 596, 21 S.L.R. 421; *Marshall* v. *Marshall*, L.R., 38 C.D. 330. A decree got in England as to the validity of the complainers' patent would be effectual in Scotland, for the patent was a British patent, and any remedy granted in England would be as wide as the application of the patent. The interdict now craved was limited to Scotland, and could not be enforced in England.

Argued for the respondents—(1) *As to the Question of Jurisdiction*—The remedy asked was purely preventive, and personal citation was unnecessary—*Waygood* v. *Bennie, supra.* In cases of wrongdoing and *quasi*-delict like the present the rule as to personal citation being necessary was inapplicable. That rule applied to cases of contract and not to cases of delict. Service was in fact made at the registered office of the company in Glasgow (as well as at their office in Birmingham), and that was the only way in which a railway company could be cited. There could be no personal service on a company. The Court had jurisdiction to prevent wrongs being committed in Scotland by foreigners on Scottish subjects, otherwise the result would be that in the case of such offences as were wrongs by the law of Scotland, but not by the law of England, Scottish subjects would have no remedy. There was no preventive jurisdiction in the Bill Chamber as distinguished from the Court of Session. The Court of Session as matter of fact exercised its preventive jurisdiction through the Bill Chamber, but it was one and the same jurisdiction whether it was exercised by the Court of Session or by the Bill Chamber. In *Waygood* v. *Bennie, supra*, the Court of Session held that the English Court had jurisdiction to prevent wrongs being done

in England by persons domiciled in Scotland, and this case was just the converse, *e.g.*, the prevention of wrongs in Scotland by persons resident in England. The Court had clearly jurisdiction to prevent such wrongs being committed in Scotland. (2) *As to the Plea of Forum non conveniens*——It had not been shown that any injustice would result from the case being tried in Scotland, and to sustain the plea of *forum non conveniens* it was essential that that should be shown—*Longworth* v. *Hope, sup.* No question of English law was involved, nor was any investigation into the company's books required. The wrongs complained of were committed in Scotland, and no proceedings had been taken or were proposed to be taken by the complainers in England. An injunction granted in England would not cover acts done by the servants of the company in Scotland. Moreover, any injunction obtained from the English courts could not be enforced in Scotland without a supplementary application to the Scottish courts.

LORD ADAM—This is a suspension brought at the instance of a firm called Toni Tyres, Limited, which is an English company having its office in London. The suspension is brought against another English company, the Palmer Tyre, Limited, also having its registered office in London, and also said to be carrying on business in Buchanan Street, Glasgow. The prayer of the petition is that the complainers seek to have the respondents interdicted and prohibited, during the continuance of certain letters-patent, "from manufacturing, selling, . . . any pneumatic tyres with wheel rims, and means of attaching pneumatic tyres to wheel rims, made in accordance with the invention described in the specification filed relatively to the letters-patent, and from directly or indirectly using . . . the invention in . . . Scotland;" so that it has to be observed that the effect of the interdict would be limited entirely to Scotland—it would not interfere with anything beyond Scotland.

[*His Lordship then stated the averments made in regard to the patent and infringement*].

Now, that is all they say in respect of the patent and the infringement. Then they go on to say that the respondents carry on business at 8 Buchanan Street, Glasgow, and have a place of business there. In answer to that there is no denial by the respondents that they did propose to sell these tyres in Scotland. They then set forth that their attachment differs from that of the other company—but I need not go into that, for that is on the merits—and in particular they deny that they have a place of business in Glasgow, and then they say that "in any event the courts of Scotland are not a convenient *forum* for adjudicating upon the subject-matter of the present action. The complainers and respondents are both English companies, and are both subject to the jurisdiction of the English courts, in which the respondents are ready and willing to answer any writ or action which the complainers may bring against them with reference to the subject-matter of the present process."

These are the averments and the counter averments set forth in this note of suspension, and upon these the respondents have two pleas-in-law. The first is that the Court has no jurisdiction over the respondents, and the second is that the Court of this country is not a *forum conveniens.* The Lord Ordinary by his interlocutor has repelled both these pleas, and allowed a proof, and the question is whether his Lordship's interlocutor is right.

Now, this question of jurisdiction was founded by the complainers upon two grounds, the first being that the respondents had in point of law a place of business in Glasgow, and the second was that stated in the third sub-division of the first plea—"the Court in Scotland is the proper Court to grant interdict within Scotland against the continuance of the wrongdoing complained of." These are the two pleas as to the jurisdiction. The Lord Ordinary in disposing of these pleas does not sustain the jurisdiction on the first, as to the place of business, because he says that as a question of fact that would need to be inquired into. But he says the third plea—the plea I have just read—is a sound plea, and has given effect to it. Now it appears to me that the Lord Ordinary is right. If the complainers' statements are true—and we must assume them to be true at this stage of the case—a wrong has been done, and it being done in Scotland I think it would be singular if the Courts of Scotland had not jurisdiction to prevent that wrong being continued. I agree with the Lord Ordinary that there is no analogy between jurisdiction in cases of delict or *quasi*-delict and a case of contract. In this case the effect of the jurisdiction is confined entirely to Scotland. The alleged illegal acts are being done in Scotland, and the object of the suspension is to stop these illegal acts being done in Scotland. I accordingly agree with the Lord Ordinary when he says "the remedy sought is purely preventive; it is not petitory or declaratory. It is directed purely to prevent the respondents repeating a delict or *quasi*-delict which the complainers say the respondents have in the past committed in Scotland. In an action *ratione delicti* for the purpose of preventing the repetition of a delict, I cannot doubt that the Courts of the territory have jurisdiction over a foreigner, though he be not found within the territory." I entirely agree with that statement, and I think the Lord Ordinary has rightly sustained the plea of jurisdiction on the ground that he has done. Then as to the plea of *forum non conveniens.* If the Lord Ordinary is right in sustaining the jurisdiction, it humbly appears to me that the *forum* to which this application is made was not only a *forum conveniens* but the only appropriate *forum* before which to bring it. On these grounds I think the judgment of the Lord Ordinary should be adhered to.

LORD M'LAREN—It is a proposition recognised not only in our jurisprudence, but I think all over the world, that patent rights—rights to the exclusive privilege of working an invention—are in the fullest sense rights of property. They are capable of being transferred for valuable consideration or otherwise disposed of just like any other incorporeal right of property. An infringement of a patent right is therefore an invasion of private property, and is, I think rightly described in the Lord Ordinary's judgment as a *quasi*-delict. Now, when an action is brought in this country alleging interference with the rights of property in a patent, and stating reasonable grounds for apprehending that such infringement will be continued, I think the courts of this country have jurisdiction in regard to such an action—in other words, to exercise what is called preventive jurisdiction. The question is so elementary that I do not think it can be made clearer by argument or illustration, but our decision results from the general function of the courts of every country to exercise their authority so that law and order may be maintained within the territory of the Court. But further, it appears to me that in this case the courts of Scotland are the only courts that have power to prevent the continuance of this alleged illegal course of action, because no injunction or interdict granted by any other court could be enforced in this country without a supplementary application to the courts of this country, which would just be doing by a circuitous method what is now proposed, and I think rightly, to be done directly. I am therefore of opinion with your Lordship that the Lord Ordinary's judgment is right.

LORD LOW—I have no doubt that when a delict or *quasi*-delict is committed in Scotland the Court has jurisdiction to protect the injured party.

Such jurisdiction, however, requires in the case of foreigners to be carefully exercised. It ought not, in my judgment, to be extended beyond the necessities of the particular case, and it ought to be invoked in an appropriate form of proceeding.

The complainers' counsel supposed the case of the complainers having, instead of bringing a note of suspension and interdict in the Bill Chamber, raised an action in the Court of Session for declarator that their patent was valid, and for interdict against the respondents selling the protected article.

It may be (I express no opinion on this point) that the plea of no jurisdiction would have fallen to be sustained in such an action, because it would have been the appropriate form of action for having the general question of the complainers' rights as holders of the patent determined, and would not have been an appropriate proceeding if all that the complainers desired was to be protected against an alleged wrong which had been done to them in Scotland.

But for the latter purpose a note of suspension and interdict is a proper and recognised form of proceeding, and one in which the Court has a large discretion in regard to the extent of the remedy which ought to be given.

It may be, and often is, competent and expedient to determine in a note of suspension and interdict questions of right or of title which might properly be made the subject of an action of declarator. On the other hand the Court may, and frequently does, refuse to do more in a note of suspension and interdict than make interim regulations until the question of right or title can be determined in an appropriate action.

Such a course might have been adopted in this very case if the circumstances had rendered it expedient or possible. For example, if it had appeared that either of the parties was about to raise proceedings in the English courts to have the question of the validity of the patent tried, then I think that the present note might very well have been sisted to await the result of the English action, interim interdict being granted in the meantime, or an obligation taken from the respondents in such terms as would have kept the complainers free from loss in the event of their establishing that the patent was good.

But that is not at all the position of matters here. Neither party proposes to take proceedings in England, and neither party is bound to do so. The position taken up by the respondents is simply that because they are foreigners and jurisdiction has not been founded against them by arrestment or personal service in Scotland the Scottish courts cannot take cognisance of anything which they have done or may threaten to do in Scotland. The argument would have been equally applicable if the respondents had admitted both the validity of the patent and its infringement by them. But in that case it seems to me that would be intolerable if the Court was impotent to prevent a repetition of the admitted wrong. The only difference, however, between that case and the present is that here the respondents say that the patent is not valid.

I do not think that it can be maintained that the jurisdiction of the Court to give protection against an alleged wrong depends upon whether the wrong is admitted or denied. Whether the plea that the patent is not valid is or is not well founded cannot be ascertained without investigation.

I imagine that the patent must be presumed to be good until the contrary is proved. I therefore do not see how any other course could be followed except that adopted by the Lord Ordinary. As I have indicated, if the main issue which had been raised had been the validity of the patent for any purpose and for any country which it embraces, the plea of no jurisdiction might have been sustained, even although the occasion of bringing the action had been an infringement of the patent in Scotland.

But the question raised in the present proceeding is confined to this—whether the respondents have committed a wrong against the complainers in Scotland alone, and whether they are entitled to be pro-

tected against a repetition of that wrong in Scotland. I am of opinion that that is a question which this Court has necessarily jurisdiction to entertain and to dispose of, and that it is immaterial that owing to the position taken up by the respondents it is necessary, in order to determine that question, to inquire incidentally whether or not the patent is valid.

In regard to the plea of *forum non conveniens* I think that what I have said shows that it is in no way applicable to a case of this kind.

I am therefore of opinion that the Court should refuse the reclaiming note and adhere to the interlocutor of the Lord Ordinary.

The Court adhered.

Counsel for the Complainers and Respondents—Salvesen, K.C.—Findlay. Agents—Gill & Pringle, W.S.

Counsel for the Respondents and Reclaimers — Clyde, K.C. — Smith Clark. Agents—J. & D. Smith Clark, W.S.

Tuesday, January 31.

SECOND DIVISION.

[Sheriff of the Lothians and Peebles.

THE LONDON AND EDINBURGH SHIPPING COMPANY *v.* BROWN.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1, *sub-sec.* (1)—*Accident Arising out of and in the Course of the Employment — Workman Killed while Voluntarily Attempting to Rescue Fellow-Workman.*

A steamship was lying moored to a quay in a dock discharging her cargo by cranes from the forehold, mainhold, and afterhold, under the superintendence of a stevedore who had contracted with the owners to unload the vessel. In his employment were a number of labourers, each of whom was appointed to work in connection with one of the holds, either on board the vessel or on the quay. A, who was employed on the quay to remove cargo discharged from the afterhold, and who did not require in the performance of his duty to go on board the vessel, was informed by a fellow employee that one of the workmen employed in the forehold was lying there in an unconscious condition. A immediately boarded the vessel, offered to attempt a rescue, and was lowered into the forehold, where both he and the man he had attempted to rescue were suffocated by carbonic acid gas.

A acted without instructions from and without the knowledge of the stevedore, who had already gone in search of rescue appliances.

Held that A met his death by an accident arising out of and in the course of his employment, within the meaning of the Workmen's Compensation Act 1897, sec. 1, sub-sec. 1—*diss.* Lord Kyllachy, who was of opinion that his death was not due to an "accident."

Expenses—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37)—*Stated Case —"Expenses of the Stated Case"—Expenses in Connection with Adjustment of Case.*

In an appeal on a stated case under the Workmen's Compensation Act 1897 the Court found the respondent entitled to "the expenses of the stated case." On the Auditor's report on the respondent's account, the respondent objected to the Auditor having taxed off all the items of expenses in connection with the adjustment of the stated case, amounting to £7, 7s. 2d.

The Court *sustained* the objections to the Auditor's report, but modified the amount of the expenses of adjustment at £2, 2s., *holding* that while the fair and reasonable expenses of preparing the case formed part of "the expenses of the stated case," certain of the charges made, and especially a fee to counsel for revising the case, were not reasonable.

M'Govern v. *Cooper & Company*, November 30, 1901, 4 F. 249, 39 S.L.R. 164, *distinguished.*

Mrs Agnes Scott or Brown having claimed compensation under the Workmen's Compensation Act 1897 on account of the death of her son Peter Brown, from the London and Edinburgh Shipping Company, Leith, the matter was referred to the arbitration of the Sheriff-Substitute (GUY) at Edinburgh, who made an award of £93, 12s.

At the request of the London and Edinburgh Shipping Company the Sheriff-Substitute stated a case for appeal.

The case set forth—"On 6th May 1904 the steamship 'Fingal,' owned by the appellants, was moored at the quay adjoining the West Pier, Leith. On that date her cargo was being discharged by workmen in the employment of Peter M'Leod, stevedore, Leith, who was under contract with the appellants to discharge the cargo at an overhead rate per ton. The discharge was being carried out at three holds of the vessel—namely, the forehold, mainhold, and afterhold—by means of steam cranes on board the vessel. Certain of Peter M'Leod's employees were engaged on board the vessel and certain of them on the quay, each man being appointed to work in or in connection with one of said holds. Peter Brown, who resided at 5 Citadel, Leith, was one of Peter M'Leod's employees engaged to work on the quay in connection with the discharge of the cargo from the afterhold. His duty was to remove the cargo, on its being put upon the quay, to the place appointed for it, and he did not require, in the performance of such duty, to go on board the vessel. In returning from the place where he had put part of the cargo, and while passing the forehold of the vessel, he was informed by another employee of Peter M'Leod, who was working on board the vessel in connection with