

Court had allowed jury trials, were hardly in point owing to the possible reluctance of the Court to send the case back to the Sheriff Court for proof, and also to the fact that the allowance of jury trial in them did not involve the overruling of the discretion of a judge of the Court of Session. Difficulty as to the relevancy or irrelevancy of averments was distinctly a "special cause," and the case was peculiarly one suited for proof—*Jack v. Rivet, Bolt, and Nut Co., Limited*, March 10, 1904, 6 F. 572, 41 S.L.R. 429; *M'Nab v. Fyfe*, July 5, 1904, 6 F. 925, 41 S.L.R. 736.

LORD JUSTICE-CLERK—There is no doubt that an action such as the present need not necessarily be sent to trial before a jury. After the action has been removed to the Court of Session under section 6 of the Employers' Liability Act it is for the Lord Ordinary to determine the mode of trial, as in the case of an action originally raised in the Court of Session. In the present instance the Lord Ordinary has exercised his discretion by sending the case to proof, and I should be very slow to interfere with what he has decided in the exercise of his discretion. I do not say that there might not be cases in which the Court would interfere, but it would require to be on very strong grounds. Here no cause has been shown for altering the decision of the Lord Ordinary.

LORD KYLLACHY and **LORD KINCAIRNEY** concurred.

The Court adhered.

Counsel for the Reclaimer—A. J. Young. —W. Thomson. Agent—W. I. Haig Scott, S.S.C.

Counsel for the Respondents—J. R. Christie. Agents—R. R. Denholm & Kerr, S.S.C.

Saturday, May 20.

FIRST DIVISION.

[Sheriff Court at Dumbarton.]

THE SINGER MANUFACTURING COMPANY v. CLELLAND.

Process—Master and Servant—Workmen's Compensation Act (60 and 61 Vict. c. 37)—Transmission of Process—Act of Sederunt of 3rd June 1898.

The Act of Sederunt of 3rd June 1898, which regulates procedure under the Workmen's Compensation Act 1897, by section 9 (f) makes certain regulations as to printing with this proviso—"Provided always that it shall not be necessary to print any document except the case without a special order from the Court, and provided also that either party may move for an order on the sheriff-clerk to transmit the process."

In a stated case under the Workmen's Compensation Act 1897 the Court refused a motion for an order on the

sheriff-clerk to transmit the process, made on the ground that there was appended to the Sheriff's findings a note which might in certain circumstances be useful in deciding the case.

This was a stated case in an arbitration under the Workmen's Compensation Act 1897 between the Singer Manufacturing Company, Kilbowie, Clydebank, Dumbar-tonshire, and Joseph Clelland, sawyer, 1 Elgin Street, Clydebank, brought from the Sheriff Court at Dumbarton. The arbitration was at the instance of the Company to review the weekly payments made by them to Clelland, and to have the same ordered to be ended. The Sheriff-Substitute (BLAIR) reduced the compensation payable to one penny per week until further orders of Court and found the Company liable in expenses. The Company appealed.

Upon the case appearing in the Single Bills counsel for the appellants asked for an order on the Sheriff-Clerk to transmit the process, and referred to the Act of Sederunt of 3rd June 1898 (*quoted in the rubric*). It was explained that a note appended to the Sheriff-Substitute's decision might, in the opinion of the appellants, be of use in the decision of the case under certain circumstances.

Counsel did not appear for the respondent.

The Court (LORD PRESIDENT, LORD ADAM, LORD M'LAREN, and LORD KINNEAR) refused the motion.

Counsel for the Appellants—Constable. Agents—J. W. & J. Mackenzie, W.S.

Agents for the Respondent—Mackay & Young, W.S.

Saturday, May 20.

SECOND DIVISION.

CLEMENTS v. THE LORD PROVOST, MAGISTRATES, AND TOWN COUNCIL OF THE CITY OF EDINBURGH.

Expenses—Jury Trial—Skilled Witnesses—Case Settled before Trial—Investigations Previous to Trial—Judge's Certificate—A.S. 15th July 1876.

The Act of Sederunt, 15th July 1876, provides that when it is found necessary to employ skilled persons to make investigations previous to a trial or proof in order to qualify them to give evidence thereat, such additional charges for the trouble and expense of such persons shall be allowed as may be fair and reasonable, "provided that the judge who tries the cause shall, on a motion made to him either at the trial or proof or within eight days thereafter, . . . certify that it was a fit case for such additional allowance."

An action was settled before trial on the basis of a payment to one of the parties by the other of a sum of money and his expenses.