evidence was led. I appreciate the tactical astuteness of the manœuvre, but I am not sure that it is legitimate, and I should not like it to form a precedent for other actions. The case is a peculiar one, and we are now considering it upon a concluded and very voluminous proof. It is too late to take effective objection to the form of the pursuers' summons; but I must say that it has added considerably to my difficulty in formulating with precision the different issues involved in the case. It is not easy to affirm even now whether the action is or is not intended to be one of reduction, or merely for the recovery of a sum of money; and if the latter, whether by way of a *quantum meruit* or in name of damages. The truth is, it was framed to fit all possible views. The defenders argued strenuously that the pursuers must formally reduce the written contract before they can be heard to claim payment of money otherwise than in accordance with its terms; and they urged with great force that it was out of the question to reduce the contract after the whole works had been finally completed. The pursuers replied that it was not open to them to take action sooner than they did; the existence of fraud and misrepresentation was unknown to them at the outset, and only became apparent to them gradually as the work went on; and they had done their best to keep matters open by making such protests from time to time as the state of their knowledge enabled them to do. I have come to think (as the Lord Ordinary seems to have thought) that it is not necessary for the pursuers formally to reduce the written contract; because, though it may stand as the contract between the parties, the defenders are barred, by reason of their fraudulent misrepresentations, from holding the pursuers to its terms so far as regulating the scale and amount of their payment. Whether that payment ought, strictly speaking, to be regarded as a *quantum meruit* or as damages is probably not a question of real importance, because the amount of damage would fall to be ascertained very much on the basis of *quantum meruit*. It remains to observe that while there must be inquiry into the amount payable, one may be permitted to express the hope that parties do not contemplate a proof at large, but will see their way to agreeing to have the matter determined by some engineer or engineers of eminence. The Lord Ordinary has indicated a doubt whether the pursuers will be able to substantiate their demand in its entirety; and the same doubt is present to my mind, for reasons similar to those pointed out by the Lord Ordinary; but that, of course, is a matter with which we are not at this stage concerned.

The Court pronounced this interlocutor—

"Refuse the reclaiming note: Find in fact in terms of the findings in fact in the interlocutor reclaimed against: Find in law in terms of the findings in law in the said interlocutor reclaimed against, with this variation, Sustain branches (*a*) and (*c*), omitting branch (*b*), of the third plea-in-law for the pursuers: Adhere, with the above variation, to the said interlocutor reclaimed against."

Counsel for Pursuers (Respondents)—Clyde, K.C.—MacRobert. Agents—Pringle & Clay, W.S.

Counsel for Defenders (Reclaimers)—D-F. Dickson, K.C.—Macmillan. Agents John C. Brodie & Sons, W.S.

Wednesday, November 23.

FIRST DIVISION.

[Lord Skerrington, Ordinary on the Bills.

AITCHISON *v.* M'DONALD.

Diligence—Validity of Charge—Club—Party Charged not Party Named in Decree.

A decree for payment of a sum of money was obtained against a Club. A member and official of the Club was served with a charge bearing to be by virtue of the decree. He brought a suspension. *Held* that the charge was without warrant and that the Note must consequently be passed.

Sheriff—Process—Competency of Suspension of Charge in Bill Chamber—Value of Cause—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII., cap.* 51), *sec.* 5 (5), *and sec.* 7.

The Sheriff Courts (Scotland) Act 1907, sec. 5, enacts—"Nothing herein contained shall derogate from any jurisdiction, powers, or authority presently possessed or in use to be exercised by the sheriffs of Scotland, and such jurisdiction shall extend to and include—(5) Suspension of charges or threatened charges upon the decrees of Court granted by the sheriff, or upon decrees of registration proceeding upon bonds, bills, contracts, or other obligations registered in the Books of the Sheriff Court, the Books of Council and Session, or any others competent where the debt exclusive of interest and expenses does not exceed fifty pounds." Section 7—"Subject to the provisions of this Act and of the Small Debt Acts all cases not exceeding fifty pounds in value, exclusive of interest and expenses, competent in the Sheriff Court shall be brought and followed forth in the Sheriff Court only, and shall not be subject to review by the Court of Session: . . . Provided also that nothing herein contained shall affect any right of appeal competent under any Act of Parliament in force for the time being."

A decree for payment of £36, with interest thereon from a certain date, and expenses, was obtained in the

Sheriff Court against a club, and a member and official of the club was charged on the decree for payment of that sum together with another sum of £36, 4s. 7d. of expenses. A suspension of the charge having been brought in the Bill Chamber, the competency of the suspension was objected to on the ground that in terms of section 5 (5), and section 7, of the Sheriff Courts (Scotland) Act 1907 the Sheriff had privative jurisdiction, and the suspension should have been brought in the Sheriff Court.

Held that the suspension was competent because (1) the value of the cause was really more than the actual sum proposed to be exacted, as the decision would settle the liability of the complainer for debts of the club generally, and (2) even with regard to the precise pecuniary value of the cause, that was more than fifty pounds, as the sum proposed to be exacted consisted not merely of the £36 and interest contained in the decree but of that sum plus £36, 4s. 7d. of expenses.

John M'Donald, wright and contractor, Adelphi Street, Bridgeton, Glasgow, obtained a decree in the Sheriff Court at Glasgow for payment of £36, with interest thereon from 27th April 1909, against the Scottish National Athletic Club, 36 Charles Street, Glasgow. Thereupon, on 26th August 1910, he served a charge, bearing to be in virtue of the said decree, on George Aitchison, 187½ New Dalmarnock Road, Glasgow, a member and official of the club, for payment of the said £36 and said interest, together with £36, 4s. 7d. in name of expenses.

Aitchison brought a note of suspension in the Bill Chamber, and pled—"The said charge being inept, incompetent, and without any legal warrant, the complainer is entitled to suspension as craved."

The Lord Ordinary on the Bills (SKERRINGTON) refused the note of suspension on the ground that owing to the principal sum being below £50 the suspension of the charge was within the privative jurisdiction of the Sheriff Court under the Sheriff Courts Scotland Act 1907.

The complainer reclaimed.

At the bar of the Inner House the respondent conceded that the charge was without warrant, but he objected to the competency of the suspension, and argued—Under the Sheriff Courts (Scotland) Act 1907, sec. 5, sub-sec. 5, the jurisdiction of the Sheriff was extended to and included suspension of charges upon Sheriff Court decrees, and under section 7, where the value of the cause, exclusive of interest and expenses, did not exceed fifty pounds, a suspension could be brought in the Sheriff Court only, and was not subject to review by the Court of Session. In the present case the value of the cause exclusive of interest and expenses was only £36, being the sum contained in the decree for payment obtained in the Sheriff Court. Accordingly the Sheriff Court had privative jurisdiction.

Answered for the complainer—The value of the cause exceeded £50, and accordingly the present suspension was competent. The complainer was not seeking to review the decree obtained in the Sheriff Court, and the suspension of the charge was an entirely new and separate cause, because the party charged was not a party to the action in the Sheriff Court. Therefore the value of the cause in the process of suspension was determined by the sum contained in the charge, viz., £72, 4s. 7d., consisting of the £36 found due in the decree plus £36, 4s. 7d. of expenses and this sumw as over £50.

LORD PRESIDENT—The respondent in this case raised an action against a club entitled the Scottish National Athletic Club, in the Sheriff Court at Glasgow, that club having premises in Glasgow, in which action he concluded for decree of payment of £36, with interest thereon from the 27th day of April 1909. He got decree against the club for the said sum, together with another sum of £36, 4s. 7d. in name of expenses. I shall assume that that was a perfectly good decree, though there may be difficulties about it, because a decree against a club with a purely descriptive name without the conjunction of any individual with it seems to me to raise grave questions as to the working out of the decree. The holder of the decree then proceeded to give what he called a charge upon it. What he called a charge was that by means of messenger he charged George Aitchison, who is a member and an official of the club, to make payment of the sums named in the decree against the club, namely, £36 and £36, 4s. 7d. Aitchison then brings this suspension on the broad simple ground that he has been charged without warrant.

I think the matter is so simple as to be startling, and it amounts to this—a decree against A is not warrant for a charge against B, and therefore the respondent here, having got decree against the Scottish National Athletic Club, could not charge George Aitchison upon that warrant. But having raised his suspension in the Bill Chamber, Aitchison was met by the plea that the suspension was excluded by the provisions of the Sheriff Courts (Scotland) Act 1907; and to that plea the Lord Ordinary in the Bill Chamber gave effect. Section 5 of the Act provides—[*His Lordship here quoted the section—v. sup. in rubric*]. I think that this plea is radically bad, and really there is quite a choice of grounds upon which that opinion may be founded.

In the first place, it does not seem to me that the charge here is a charge upon a decree of the Sheriff Court at all, because the whole point is that it was a charge absolutely without warrant. A charge upon a Sheriff Court decree must mean a charge which a Sheriff authorises, and certainly the Sheriff did not do that here. Secondly, there is the question of the value of the cause. There is something involved

here which is rather more than the pecuniary value of the actual sum which it is proposed to exact; because if you can suppose that it could be right that Aitchison had to pay the £36 and the £36, 4s. 7d. only because a decree had been granted against the Scottish National Athletic Club for those sums, it follows that he must also pay any sum that anybody can recover against the club. We are then in that class of case where the question brought before the Court was whether a passenger on a tramcar ought to have paid a penny or twopence as his fare; and there it was held that the true question of the case was whether the tramway company was entitled to charge twopence or only a penny; and that question went far beyond the pecuniary value of the sum immediately involved. But thirdly, even if we were to pin ourselves to the precise sum here, no exception can be taken to the value of the cause, as it is not merely £36 and interest, but that sum *plus* £36, 4s. 7d., which is more than the required £50. That point must be decided upon the provisions of section 7 only, and not at all upon section 5 (5), which defines the jurisdiction of the Sheriff in suspending charges competent in his Court, and not the limit of the value of causes which must be brought before him.

I therefore think we must recall the Lord Ordinary's interlocutor and pass the note, which means that the suspension will have to be granted as a matter of course in the Court of Session; and probably the complainer will not take any further steps in the matter at all.

LORD KINNEAR—I agree with your Lordship.

LORD JOHNSTON—I also agree.

LORD MACKENZIE—I am of the same opinion.

The Court pronounced this interlocutor—

"Recal said interlocutor [*i.e.*, of 15th September 1910]: Remit to the Lord Ordinary on the bills to pass the note: Of new sist execution meantime and decern: Find the complainer entitled to expenses, and remit the account thereof to the Auditor to tax and to report to the Lord Ordinary on the Bills, to whom grant authority to decern for the taxed amount thereof."

Counsel for the Complainer and Reclaimer—Forbes. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Respondent—Macquisten. Agent—A. C. D. Vert, S.S.C.

Tuesday, November 29.

FIRST DIVISION.

[Sheriff Court at Hamilton.

DEVONS *v.* ALEXANDER ANDERSON & SONS.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1)—*Time for Making Claim—Claim not Made within Six Months—Bar to Pleading Statutory Limitation.*

An injured workman was waited upon by an agent of an insurance company, with whom his employers were insured, who endeavoured to get him to accept compensation, and by a tout to a writer who advised him not to accept compensation but to claim damages. The workman eventually decided not to accept compensation, and put the matter into the writer's hands, who, however, carried nothing to a conclusion, with the result that the six months allowed by the Act for making a claim expired. In an arbitration at the instance of the workman the arbiter found that the pursuer was barred from prosecuting his claim, and dismissed the application.

Held that as no claim had been made within the six months, the application had been rightly dismissed—no reasonable cause for the failure to make a claim being stated, and there being nothing to bar the employer from pleading the statutory limitation.

Observations (*per* Lords Ardwall and Johnston) as to the effect of an employer's admission of liability, or offer to pay compensation, on the necessity for making a claim.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 2 (1), enacts—"Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless . . . the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury. . . . Provided always that . . . (*b*) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause."

In an arbitration under the Workmen's Compensation Act 1906 between Patrick Devons, labourer, Holytown, and Alexander Anderson & Sons, boilermakers, Motherwell, the Sheriff-Substitute (THOMSON) found that the pursuer was barred from prosecuting his claim, and dismissed the application. He stated a case for appeal.

The *facts* were—"(1) That the appellant met with an accident while working as a labourer in respondents' employment on 24th March 1908, his average weekly earnings being then 24s.; (2) that for the treatment of his injuries he was taken to