ter it in terms of the trust purposes. That question appears to be set at rest by section 47 of the Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62), the terms of which, if not directly applicable, would seem to be sufficiently wide to cover the present case.

"Your Lordships, if satisfied that the prayer of the petition may be granted in whole or in part, may be pleased to remit the petition back to the reporter for final adjustment in conformity with such instructions thereon as your Lordships may think proper to give."

The case was heard on 25th February 1911 before the Lord President, Lord Johnston, and Lord Skerrington, and re-heard on 4th March 1911 along with a petition—*Wauchope and Others (Trustees of Anderson Female School)*—before the Lord President, Lord Kinnear, Lord Dundas, Lord Johnston, and Lord Skerrington.

Argued for the petitioners—Power to alter the scheme was given by section 20 of the Educational Endowments (Scotland) Act 1882 (45 and 46 Vict. c. 59), section 20, and article 10 of the scheme. The petitioners had power to sell the school to the School Board—*M'Culloch and Others* v. *Kirk Session and Heritors of Dalry*, July 20, 1876, 3 R. 1182, 13 S.L.R. 717; Education (Scotland) Act 1872 (35 and 36 Vict. c. 62), section 37. Moreover, power was given to the School Board to accept the trust and hold the fund under section 47 of the 1872 Act. As in *Governors of Jonathan Anderson Trust*, March 12, 1896, 23 R. 592, 33 S.L.R. 430, so here, the effect of the transference of the trust would not be to relieve the rates. The case of the Gateside School—*Sutherland*, February 3, 1903, 5 F. 424, 40 S.L.R. 345—had no bearing.

At advising—

LORD PRESIDENT—I am of opinion that in this case the prayer of the petition may be granted.

I think any difficulty that might appear to arise is got over by the proposed arrangement. The purchase of the school by the School Board will bring about the same result as if it were sold to a third party and the scheme were adjusted for the administration of the revenue to be derived from the price obtained.

I am satisfied that here there is a good case for not carrying on the school as it is, and that the School Board has power to accept the trust and take over the capital fund under section 47 of the Act of 1872. Accordingly I think the prayer of the petition should be granted and the proposed alterations on the scheme approved, with one exception. I do not think it would be right in the substituted article 5 to leave in the words "or otherwise as the said Scotch Education Department may from time to time determine." I think that would be substituting the Scotch Education Department for ourselves in a duty that has been put upon us by Act of Parliament. With the exception of these words, I think that the proposed alterations may be given effect to.

I therefore propose that the Court grant the prayer of the petition and remit to the reporter to see the alterations on the scheme duly carried out.

LORD KINNEAR, LORD DUNDAS, LORD JOHNSTON, and LORD SKERRINGTON concurred.

The Court allowed the petition to be amended by the deletion of the words "or otherwise as the said Scotch Education Department may from time to time determine"; approved of the report; and gave the approval and authority and made the alterations in the scheme as asked in the prayer of the petition, and settled the scheme as altered and adjusted as the scheme for the administration of the endowment; and remitted to the reporter to see the agreement and scheme carried out.

Counsel for the Petitioner—A. M. Mackay. Agents—Alexander Morison & Company, W.S.

Friday, March 17.

SECOND DIVISION.

(WITH THREE JUDGES OF FIRST DIVISION.)

[Sheriff Court at Glasgow.

WHITTON *v.* EWING, EDGAR, & AITKEN.

Sheriff—Process—Jury Trial—Interlocutor Fixing Questions to be Put to Jury—Appeal — Competency — Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, c.* 51), *secs.* 28, 31, 32, *and* 52—*Workmen's Compensation Act* 1906 (6 *Edw. VII, c.* 58), *sec.* 14, *and Second Schedule* (17) (*b*).

A workman raised an action in the Sheriff Court against his employers, in which he claimed damages for personal injury at common law, or alternatively compensation under the Employers' Liability Act 1880. The Sheriff, on the pursuer's motion, appointed the cause to be tried before a jury, and thereafter issued an interlocutor fixing the questions to be proponed to the jury. On the motion of the defender the Sheriff granted leave to appeal against this interlocutor. The defender thereupon appealed to the Court of Session.

Held by a Court of Seven Judges (*dub.* Lord Kinnear) that the appeal was competent.

The Sheriff Courts (Scotland) Act 1907 (7 Edw VII, c. 51), enacts—Section 28—"Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a sheriff-substitute or of a sheriff, but that only if the value of the cause exceeds fifty pounds, and the interlocutor appealed against is a final judgment, or is an interlocutor. . . . (*c*) Against which the sheriff or the sheriff-substitute, either *ex proprio motu* or on the motion of any party, grants leave to

appeal; provided that any exclusion or allowance of appeal competent under any Act of Parliament in force for the time being shall not be affected by this . . section." Under the heading "Jury Trial in Sheriff Court" come sections 31, 32, and 33. Section 31 enacts—"In any action raised in the Sheriff Court by an employee against his employer concluding for damages under the Employers' Liability Act 1880, or alternatively under that Act or at common law, in respect of injury caused by accident arising out of and in the course of his employment, where the claim exceeds fifty pounds, either party may, so soon as proof has been allowed, or within six days thereafter, require that the cause shall be tried before a jury, in which case the sheriff shall appoint the action to be tried before a jury of seven persons. The verdict of the jury shall be applied in an interlocutor by the sheriff, which shall be the final judgment in the cause, and may, subject to the provisions of this Act, be appealed to either Division of the Court of Session, but that only on one or more of the following grounds—(1) That the verdict has been erroneously applied by the sheriff; (2) that the verdict is contrary to the evidence; (3) that the sheriff had in the course of the trial unduly refused or admitted evidence or misdirected the jury; (4) that an award of damages is inadequate, or is excessive. . . ." Section 32—"Where jury trial has been ordered, the sheriff shall after hearing parties, if he shall think that necessary or desirable, issue an interlocutor setting forth the question or questions of fact to be at the trial proponed to the jury. . . ." Section 33 deals with the remuneration of jurors. Section 52—". . . All . . . statutes . . . now in force so far as the same are inconsistent with the provisions of this Act, are . . . hereby repealed."

The Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), enacts—Section 14—"In Scotland, where a workman raises an action against his employer independently of this Act, in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the Sheriff Court, and concluding for damages under the Employers' Liability Act 1880, or alternatively at common law or under the Employers' Liability Act 1880, shall, notwithstanding anything contained in that Act, not be removed under that Act or otherwise to the Court of Session, nor shall it be appealed to that Court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the Second Schedule to this Act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this Act shall apply." Second Schedule (17)—"In the application of this schedule to Scotland . . . (*b*) . . . it shall be competent to either party . . . to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either Division of the Court of Session. . . ."

James Whitton, boilermaker, 13 Walker Street, Partick, *pursuer*, brought an action against Ewing, Aitken, & Edgar, stevedores, Glasgow, *defenders*, in which he claimed damages at common law in respect of personal injuries sustained while in the employment of the defenders, or alternatively compensation under the Employers' Liability Act 1880.

On 29th July 1910 the Sheriff-Substitute (BOYD) allowed a proof, and on 24th August 1910, on the pursuer's motion, he appointed the case to be tried before a jury. On 21st October 1910 he pronounced an interlocutor settling the questions to be proponed to the jury at the trial, and on 26th October 1910, on the defenders' motion, he granted leave to appeal against the interlocutor of 21st October. The defenders thereupon appealed to the Second Division of the Court of Session.

The pursuer objected to the competency of the appeal, and on 24th December 1910 the Second Division appointed the case to be heard before themselves, with three Judges of the First Division.

Argued for pursuer—The appeal was incompetent. The authorities on the point were, it was true, conflicting. The Lord President in *Taylor* v. *Sutherland*, 1910 S.C. 644 (at 651), 47 S.L.R. 541, indicated that he considered that no appeal, even with leave, was competent against the interlocutor fixing the questions to be put to the jury. The Lord Justice-Clerk and Lord Ardwall in *Adamson* v. *Fife Coal Company*, 1909 S.C. 580, 46 S.L.R. 459, expressed the contrary view. They submitted that a sound construction of the Sheriff Courts Acts 1907 showed that appeal in the present circumstances was incompetent. No doubt in section 28 there was a general provision for appeal against interlocutors when the Sheriff granted leave to appeal. But section 28 had no application here. Sections 31 to 33 of the Act by themselves constituted a special code dealing with the procedure in jury trial, which the Legislature had thought required special provision. As soon as proof was allowed under section 31 a party had an absolute right to a trial by a jury of seven, and the Sheriff in fixing the questions to be put to the jury was merely acting ministerially, which could not give a right of appeal. There could be no appeal in jury trials in the Sheriff Court except on the matters enumerated in section 31. Special procedure was to be expected, for cases between employers and employees had always received special treatment—Employers' Liability Act 1880 (43 and 44 Vict. c. 42), sec. 6; *Morrison* v. *Baird & Company*, December 2, 1882, 10 R. 271, 20 S.L.R. 185; *Patons* v. *Niddrie and Benhar Coal Company*, January 14, 1885, 12 R. 538, 22 S.L.R. 345; *Kane* v. *Singer Manufacturing Company*, May 21, 1904, 6 F. 658, 41 S.L.R. 571; *M'Grath* v. *Glasgow Coal Company, Limited*, 1909 S.C. 1250, 46 S.L.R. 890. (2) But even if section 28 of the Sheriff Courts Act 1907 did apply to the present case, the appeal was still incompetent. It was provided in section 28 that any allowance or

exclusion of appeal competent under any Act of Parliament in force for the time being should be saved. But the Workmen's Compensation Act 1906 (*cit. sup.*) only allowed appeal in a case such as the present on a question of law, and that by way of stated case. That was fatal to the present appeal. It was the idea of the Legislature that no question of fact should be carried beyond the Sheriff Court.

Argued for defenders—The appeal was competent under section 28 (*c*) of the Sheriff Courts Act 1907, for the Sheriff had granted leave to appeal. When leave was granted section 28 gave an absolute unqualified right of appeal. Section 31 did not qualify section 28 in any way. It would be an extraordinary thing if appeal could be shut out by implication, and that too as regards the most vital interlocutor in the course of the whole proceedings. It was not sound to say that the Sheriff in fixing the questions to be put to the jury was acting ministerially. He was acting judicially at a very important stage of the case. An interlocutor of a Lord Ordinary in the Court of Session approving of issues could be reclaimed against. It would be odd if there was no appeal from the Sheriff's interlocutor. Appeal was not always excluded in cases between employers and employees —*Cook* v. *Bonnybridge Silica and Fireclay Company, Limited*, 1911 S.C. 177, 48 S.L.R. 243. (2) Appeal was not excluded by section 14 of the Workmen's Compensation Act 1906. That section allowed appeal by way of stated case on a question of law. The Sheriff-Substitute here in granting leave to appeal had in effect stated a case for determination of a point of law. There was no necessity, therefore, for a stated case. There was no provision in the Sheriff Courts Act that where appeal was allowed the form thereof should be regulated by any particular Act.

At advising—

Lord Justice-Clerk—The question which is before the Court arises out of an appeal taken by the defenders in a Sheriff Court action in which the Sheriff-Substitute, having allowed a proof, and thereafter, when thereto moved, ordered it to be tried by jury under the recent Sheriff Court Act, gave leave to appeal on his interlocutor adjusting questions for trial. It seemed to be a question not very easy of solution when the provisions of the Act were considered, and attention given to a view expressed by the Lord President in a previous case (*Taylor*, 1910 S.C. 644). It was therefore sent to a Court of Seven Judges that an authoritative decision might be obtained.

Under the provisions of the 28th section of the Act appeal is made competent—provided the value of the cause exceeds £50—against a final judgment, and also against an interlocutor granting interim decree for payment other than for expenses, decree sisting the action, or an interlocutor against which the Sheriff or Sheriff-Substitute *ex proprio motu*, or on motion of party, grants leave to appeal. Any exclusion of appeal or allowance of appeal granted by a statute in force is saved.

In this case it is not disputed that there is in the interlocutor leave given to appeal, and therefore unless it can be held that some other provision of the Act makes section 28 inapplicable, and so takes away the power of the Sheriff to make an appeal good by his consent, it cannot be said that the appeal itself is incompetent.

The respondent in the appeal maintains that by reference to the clauses which relate to jury trial he can show that procedure in the case of jury trial is regulated specially, and that the proceedings preliminary to trial, such as the adjustment of the questions to be submitted to the jury, do not constitute steps of procedure, the interlocutors as to which can be brought to a higher court of appeal—in short, as counsel put it, sections 31 and 32, dealing with jury trial, constitute a code under which there can be no competent appeal except upon the matters there enumerated. Now, the only appeals to which allusion is made in the sections relating to jury trial are appeals relating to the applying of the verdict and the final judgment after verdict. This is contained in section 31. Strangely enough section 32 goes back to a former part of the procedure—the preparing of the case for trial, the Sheriff being empowered, if he sees fit, to issue an interlocutor setting forth the question or questions to be at the trial proponed to the jury, and fixing time and place for the trial. It would have been reasonable to expect that this provision would have found its place immediately after the provision relating to the ordering of a trial by jury, and that the provisions as to the result of the trial should follow after, and not be thrust in before, provisions relating to matters preparatory to the trial. It is very difficult to see how it came about that these provisions of the Act were so transposed. Had the provisions as to adjusting the questions come in sensible order, I do not think it could be even plausibly suggested that an interlocutor fixing these questions could not, if the Sheriff gave leave, be appealed under section 28. I do not see any trace of intention in sections 31 and 32 to restrict power of appeal except as regards the final judgment following upon the verdict. The adjustment of questions for the jury may be a most delicate matter, and any mistake in doing so may lead to miscarriage of justice, and very serious loss in expenses, as, indeed, it has been seen to do in cases which have already come before this Court, and to which reference was made in the debate.

But it is maintained that there is a proviso at the end of section 28 limiting the possibility of an appeal on leave granted, and that the present appeal is struck at by that proviso, which is to the effect that if appeal is excluded or allowed by any statute in force, the exclusion or allowance is not to be affected by section 28. The contention is that section 14 of the Workmen's Compensation Act of 1906 excludes appeal except upon a question of law in a case by

a workman against his employer in the Sheriff Court under the Employers' Liability Act or at common law, and enacts that "for the purposes of such an appeal the provisions of the second schedule to this Act in regard to an appeal from the decision of the Sheriff on any question of law determined by him as arbitrator under this Act shall apply." I do not think, if this argument is sound, that it presents any practical difficulty. It is of course true that under Schedule II of the Workmen's Compensation Act the prescribed form for an appeal is that of a stated case. In my opinion what the Sheriff has done is, although not in form, in substance the statement of a case. He has submitted to the Court the determination of the question of law which the defenders desire to raise at this stage, viz., Whether he was right in fixing the questions he did to be submitted to the jury? What he did was to determine legal questions; what he did by giving leave to appeal was to put the question whether he did rightly in law. Further, by granting leave to appeal, the provisions of section 29 of the Sheriff Court Act were brought into play, enabling the Court to deal with the relevancy of the whole action. As regards the interlocutor fixing the questions, he has done just what a stated case would have done, and the objection resolves itself into the question whether, the words "stated case" not being used, the appeal allowed by the Sheriff must fall as incompetent. I cannot so hold. The Judge sends forward to us the material which raises the point of law, consenting that the party shall have the Court's decision upon the correctness in law of what he has done. I am satisfied that he acted competently, and that the case is competently before us.

LORD ARDWALL—I adhere to the opinion which I expressed in the case of *Adamson*, 1909 S.C. 580, to the effect that an interlocutor of a Sheriff-Substitute setting forth the question or questions of fact to be at the trial proponed to a jury may be appealed to the Court of Session under the provisions of section 28 (*c*) of the Sheriff Courts (Scotland) Act 1907.

It has been suggested that such interlocutors are not appealable under this section, because nothing is said about such an appeal in sections 31 to 33 of the same Act, which deal with jury trials in the Sheriff Court; and it is said that these sections form a code of procedure for jury trials in the Sheriff Court. I do not think they do so except in so far as the provisions therein contained are concerned; but the provisions regarding appeals in section 28 (*c*) of the Act are perfectly general, and in my opinion apply to all interlocutors whatever in the Sheriff Court against which the Sheriff or Sheriff-Substitute grants leave to appeal, and that this must be given effect to unless the right of appeal so given is either expressly or by plain implication taken away with regard to any particular interlocutor. I cannot find in sections 31, 32, and 33 anything to exclude such appeal either directly or by clear implication in the case of interlocutors fixing questions to be submitted to a jury.

It has been suggested that to allow such an appeal would be to interfere with the summary nature of the proceedings which it is contended the Sheriff Courts Act of 1907 introduced, and therefore is against expediency and against the scope and intention of that Act. I see in this argument no sufficient reason for depriving a party of a right of appeal where such is expressly given by statute. But if the question is to be brought to the test of expediency, it appears to me that it is wholly expedient that this right of appeal against interlocutors of the nature referred to should be sustained. If the questions fixed by such interlocutors be erroneously expressed, it is surely much better to have such error remedied before the parties incur the expense and trouble of a jury trial than that the questions should either not be put right at all or be put right with the result of setting aside the trial and whole other proceedings. Interlocutors fixing these questions are of the highest importance in jury trial procedure in the Sheriff Court, being equivalent to interlocutors approving of issues in this Court, and it would seem to me to be very undesirable to hold that whereas in the Court of Session appeals against interlocutors approving of issues for the trial of a cause are allowed either by way of motion to vary issues or by reclaiming note, yet an interlocutor of a Sheriff-Substitute fixing these questions should be final in every case. I should further think that where the Sheriff-Substitute had difficulty in adjusting questions, he would be very glad to have them submitted either to the Sheriff or the Court of Session before they were sent to trial.

I am therefore of opinion that on every ground of expediency it would be undesirable to hold that sections 27 and 28 of the Sheriff Courts Act did not apply to interlocutors fixing questions for the jury; but, as I have already stated I think it is not a question of expediency, for my opinion on the construction of the Act is that sections 27 and 28 are absolute in their terms, and apply to all interlocutors which may be pronounced by Sheriffs-Substitute under the Act.

But it was argued for the respondent that the present appeal is excluded by the provisions of section 14 of the Workmen's Compensation Act 1906, and that that section is made applicable to appeals under the Sheriff Courts Act 1907 by the provision at the end of section 28 of that Act, to the effect that any exclusion or allowance of appeal competent under any Act of Parliament in force for the time being was not to be affected by that or the preceding section. In my opinion this proviso was never intended to apply and cannot easily be applied to an appeal against an interlocutor fixing questions for a jury trial. It appears to me that the proviso was intended to cover that large class of cases raised in the Sheriff Court under the Burgh Police Acts and the Local Government and

other Acts which prescribe what appeals are to be allowed in proceedings under these Acts and under what circumstances; and I think it was intended to safeguard proceedings under such statutes that this proviso was enacted, to prevent the Sheriff or Sheriff-Substitute granting leave to appeal where appeal was excluded by the terms of the Act under which the proceedings have been brought. Although section 14 in terms may be held to apply to interlocutors pronounced in actions raised under the Employers' Liability Act, or, alternatively, at common law or under the Employers' Liability Act 1880, yet the object of it was to prevent appeals on the facts to the Court of Session; and the present appeal is not an appeal upon facts. But taking the most unfavourable view for the appellant, the 14th section allows actions to be removed to the Court of Session by appeal on a question of law, that is, by way of stated case setting forth questions of law. Now, with regard to the present interlocutor, I see nothing to prevent the Sheriff, if asked at this stage, stating a case for appeal to the Court of Session, the question being whether the averments on record are relevant and sufficient to support the questions proposed to be put. If this is so, the competency of the appeal is reduced to a mere matter of form, because in an appeal under the second schedule of the Workmen's Compensation Act 1906 it would consist, in as far as the stated case is concerned, of the record in this action, and in the present appeal we have that record here and the material for raising the question of law. This may seem a somewhat cumbrous way of getting over the difficulty, and I think it serves to show what I have already said, namely, that the proviso at the end of section 28 of the Sheriff Courts Act was not intended to apply to an interlocutor of this kind, which could not possibly have been *in intuitu* of the Parliament which passed the Workmen's Compensation Act of 1906, but was introduced as an entirely new piece of procedure under the Sheriff Courts (Scotland) Act 1907.

I am of opinion, therefore, that said section 14 does not apply to the interlocutor now under appeal; but if the contrary should be held, then I think we may hold that with very slight alteration the present appeal may be converted into a stated case under the second schedule of the Act of 1906.

LORD DUNDAS—I agree in the conclusions at which your Lordships have arrived.

LORD JOHNSTON—I agree with your Lordship that this appeal is competent. I think it is quite conceivable that the framers of this Act did intend to exclude an appeal at the point which this case has reached. But if so, I think it is fortunate that they have failed to effect their intention, because it is essentially necessary in the interest of litigants that there should be an appeal at the stage analogous to that of adjusting issues. On a careful examination of the clauses of the Act of 1907 I find no provision by which appeal is expressly excluded, and having regard to the stage of the process I should require very cogent reasons to compel me to imply one.

As regards the bearing on this question of section 14 of the Workmen's Compensation Act 1906, I take a somewhat different view from your Lordship, although I arrive at the same result. I think we must look at the repeal section of the Act of 1907 (section 52), which enacts that "All . . . . statutes . . . . now in force, so far as the same are inconsistent with the provisions of this Act, are . . . . hereby repealed." Regarding section 14 of the Workmen's Compensation Act 1906 solely in its relation to the class of cases which are to be sent to jury trial in the Sheriff Court, at the point of adjusting questions on issues, it seems to me that the provisions of section 14 are inconsistent with the provisions of the Act of 1907, and therefore that in that relation it stands repealed and need not be considered. I do not mean that it is repealed in all respects or in all its bearings, for I can conceive cases to which it might apply, but I think it must be held to stand repealed in its application to this particular class of cases at the point of process which the present example has reached.

LORD SALVESEN—This appeal is presented against an interlocutor of one of the Sheriffs-Substitute of Glasgow, by which he settled the questions which were to be proponed to a jury, and appointed a diet for trial. A motion was made on behalf of the appellants for leave to appeal against that interlocutor; and leave having been granted, the appeal has been taken. The pursuer in the action objected to the competency of this appeal; and this, which is a question of general importance, falls now to be determined. The matter is primarily regulated by section 28 of the Sheriff Courts (Scotland) Act 1907, which provides that an appeal shall be competent if the interlocutor appealed against is a final judgment or is an interlocutor (*inter alia*) "against which the Sheriff or the Sheriff-Substitute, either *ex proprio motu* or on the motion of any party, grants leave to appeal." *Prima facie* the interlocutor submitted to review belongs to the latter category; but the pursuer stated two objections to the competency—the first being that the whole procedure in the case of jury trials in the Sheriff Court is regulated by sections 31 and 32, and that these constitute a special code which expressly provides an appeal only against an interlocutor of the Sheriff applying the verdict of a jury; and impliedly excludes any appeal against interlocutory judgments pronounced after the Sheriff on the motion of either party has remitted the case—in which he had previously allowed a proof—for trial by jury. This view is supported by an indication of opinion by the Lord President in the case of *Taylor*—1910, S.C. p. 644. It is therefore entitled to the greatest respect, although three of the

Judges who took part in the decision in that case expressly reserved their opinions on this point.

In my opinion there is nothing in sections 31 or 32 to exclude the operation of section 28 except in so far as it is expressly enacted that the final judgment in a case tried by a jury is only competent on one of four specified grounds. It is true that the interlocutor remitting a case for trial by jury cannot be appealed, because the Sheriff in pronouncing such an interlocutor is only acting in his administrative and not in his judicial capacity; for if the cause be one to which the section relates he must, as soon as proof has been allowed and a motion is made by either party within six days thereafter that the cause be tried before a jury, pronounce an interlocutor to that effect. When, however, he proceeds under section 32 to settle the question or questions of fact to be at the trial proponed to the jury he is acting judicially; and although he is vested with a discretion to refuse a motion for leave to appeal at this stage, when he does grant it (as he did in the present case) I see no reason why section 28 should not apply. It would be highly inconvenient if it were otherwise; because difficult points of law may arise as to the proper questions to be proponed, and these cannot be dealt with as such after a verdict has been returned. This was very forcibly pointed out by the Judges of the Second Division who took part in the decision of the case of *Adamson* —1909, S.C. p. 580—and I agree with the views expressed by them.

The second objection was to the effect that this appeal falls under the proviso of sub-section (*c*) of section 28, which is thus expressed—"Provided that any exclusion or allowance of appeal competent under any Act of Parliament in force for the time being shall not be affected by this or the preceding section." The pursuer argued that under the Workmen's Compensation Act 1906, section 14, in the case of an action under the Employers' Liability Act or alternately at common law, raised by a man against his employer in the Sheriff Court, no appeal is competent except on a question of law, and "for the purposes of such appeal the provisions of the second schedule to this Act in regard to an appeal from the decision of the Sheriff on any question of law determined by him as arbitrator under this Act shall apply." Now the second schedule, as is well known, provides for the only competent appeal being in the form of a stated case. On the other hand, it was forcibly contended on behalf of the defenders that the Workmen's Compensation Act does not exclude appeal on questions of law—which are the only ones that they can competently raise, and that there is no provision in the Sheriff Courts Acts that where an appeal is not excluded the form of appeal shall be regulated by any particular Act. In my opinion the defenders are right here. The Sheriff-Substitute in granting leave to appeal has in effect stated a case for determination of a point of law, and no facts having as yet been ascertained, he could not have stated the case otherwise than by narrating the record and setting forth the questions which he proponed for the trial. It would be useless to insist on the formality that the print presented to us should be titled "a Stated Case" instead of "a Record" in an appeal. The questions of law which the defenders desired to raise are (1) the relevancy of the action, and (2) the appropriate questions which, assuming its relevancy, ought to be proponed to the jury. On these matters we have all the materials before us; and we have, what is equivalent to the Sheriff stating a case, leave given by him to appeal. Had a case been stated there would only have been added two formal questions--(first) whether the record disclosed a relevant ground of action, and (second) whether the questions proponed to the jury were appropriate to the matters disclosed on record. The latter question is expressly raised by the leave which the Sheriff-Substitute has given; and the former may be dealt with under the proviso contained in section 29 of the Sheriff Courts Act 1907. While, therefore, section 14 of the Workmen's Compensation Act 1906 undoubtedly creates in my opinion a formal difficulty, I see no reason why we should not, while giving substantial effect to the section, entertain the appeal in the form in which it has been brought.

LORD MACKENZIE—I agree in the results arrived at by your Lordships, and on the grounds which have been stated by Lord Salvesen.

LORD JUSTICE-CLERK—LORD KINNEAR instructs me to say that having considered this case he is in some dubiety, but that he does not dissent from the judgment we are pronouncing.

The Court sustained the competency of the appeal, and appointed the cause to be put to the Summar Roll.

Counsel for the Pursuer — Christie — Fenton. Agents — Weir & Macgregor, S.S.C.

Counsel for the Defenders — Sol.-Gen. Hunter, K.C.—J. A. T. Robertson. Agent —A. C. D. Vert, S.S.C.

VALUATION APPEAL COURT.

Friday, March 17.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen.)

GLASGOW AND GOVAN PARISH COUNCILS *v.* GLASGOW ASSESSOR.

Valuation Cases--Public Museums and Galleries—Museums and Galleries Situated in Public Parks—Dedication by Statute to Public Use—Lands and Heritages Yielding No Profit.

Held that the museums and art galleries situated in the public parks