then that would have raised a different question. But there is no suggestion in this case of anything of that kind. Accordingly, once the report of the medical referee is construed in the way I have indicated, the rest follows as has been said by your Lordship in the chair, and I agree with what your Lordship has said.

The Court answered the first question of law in the case in the affirmative and the second question in the negative, and dismissed the appeal.

Counsel for Appellant—Moncrieff, K.C.—Keith. Agents — Simpson & Marwick, W.S.

Counsel for Respondents—Cooper, K.C.—Strain. Agents—W. & J. Burness, W.S.

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*Friday, July* 12.

## FIRST DIVISION.

[Sheriff Court at Edinburgh.

## WOOLFE *v.* COLQUHOUN.

*Master and Servant—Workmen's Compensation Act* (6 *Edw. VII, cap.* 58), *sec.* 7 (2) *—Fisherman—Remuneration by Shares in Profits or Gross Earnings.*

A claimant under the Workmen's Compensation Act 1906 was employed as a member of the crew, in the capacity of a fisherman, on board a steam trawler. He was paid a weekly wage of 30s., and received in addition a payment of 2d. per pound sterling on the gross value of the fish landed from the trawler, under deduction of the cost of carriage of the fish.

*Held* (*diss.* Lord Dundas) that he was not "remunerated by shares in the profits or the gross earnings of the working" of the trawler, and was therefore not excluded by section 7 (2) of the Workmen's Compensation Act 1906 from claiming compensation under the Act.

The Workmen's Compensation Act 1906, section 7 (2), enacts—"This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel."

Joseph Walter Woolfe, 9 Henderson Street, Leith, *respondent*, claimed compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) from John Colquhoun, 132 Bridgegate, Glasgow, owner of the steam trawler "Gloxinia," *appellant*, in respect of personal injury sustained by him on board the "Gloxinia" in the North Sea. The Sheriff-Substitute (ORR) allowed a proof and stated a Case for appeal.

The Case stated, *inter alia*—"The *facts* admitted, and the *averments* of parties which raise the question of law hereinafter referred to, are as follows—The appellant is a fish merchant, carrying on business in Glasgow, and is the registered owner of the steam trawler "Gloxinia." The respondent is a trawl fisherman, and on 15th January 1912, while employed as a member of the crew in the capacity of a fisherman on board said trawler, sustained injury by accident arising out of and in the course of his employment. The respondent made, *inter alia*, the following averment—'The pursuer (respondent) is a trawl fisherman and resides at 9 Henderson Street, Leith. He is a workman in the sense of the Workmen's Compensation Act 1906. The defender (appellant) is a fish merchant, carrying on business in Glasgow. He is the registered owner of the steam trawler "Gloxinia," and was, in the sense of said Act, the employer of the pursuer at the work at which he was engaged when he sustained the after-mentioned injuries.' To this averment the defender made the following answer—'Denied that the pursuer is a workman and that the defender was his employer within the meaning of the Workmen's Compensation Act 1906. *Quoad ultra* admitted.' The respondent further averred—'The pursuer had been for a week prior to 15th January 1912 in the employment of the defender on board the said steam trawler under a contract of service entered into between the master of the said trawler on behalf of the defender and the pursuer, under which contract the pursuer was engaged to act as second fisherman on board said trawler, and was to be remunerated for his services as follows, viz., by payment of the sum of thirty shillings a week in cash,' and 'by payment of a commission or percentage or poundage known as "fish money" of two pence per pound sterling on the gross value of the fish landed each week from the said trawler under deduction of cost of carriage of the fish. During the week the pursuer was employed by the defender the gross value of the fish landed under the deduction foresaid amounted to at least £42, and the pursuer's poundage thereon amounted to at least 7s.' The appellant's answer to this averment was as follows—'Admitted that the pursuer's weekly wage amounted to 30s., and that he received in addition a share of 2d. in the £1 on the amount of the gross earnings of the said steam trawler "Gloxinia" after deduction of the cost of carriage of the catch of fish.'

"For the purpose of this case the parties admitted that at the date of the accident the respondent's weekly earnings consisted of 30s. of wages and 7s., being 2d. per £1 on the gross value of the fish landed from the 'Gloxinia' under deduction of the cost of carriage of the fish.

"The appellant stated the following pleas-in-law among others—(1) The pursuer's averments being irrelevant, the action should be dismissed with expenses. (2) The pursuer not being a workman within the meaning of the Workmen's Compensation Act 1906, the present action should be dismissed with expenses. And (3) *separatim*, the pursuer, being a member of the crew of a fishing vessel remunerated by shares in the profits or gross earnings of such vessel within section 7 (2) of the Act,

is not entitled to compensation, and the present action should be dismissed with expenses.

"At the request of parties I heard counsel on the said three pleas, and I thereafter, on 14th May 1912, issued the following interlocutor:—'*Edinburgh, 14th May* 1912.—The Sheriff-Substitute . . . . repels the first, second, and third pleas-in-law for the defender; allows a proof. . . .'

The *question of law* for the opinion of the Court was — "Whether on the facts as stated the respondent was remunerated by a share or shares in the profits or the gross earnings of the working of said fishing vessel, and is thereby excluded by section 7 (2) of the Workmen's Compensation Act 1906 from claiming compensation under said Act?"

Argued for the appellant—The respondent was remunerated by a share in the profits or gross earnings of the trawler within the meaning of section 7 (2) of the Workmen's Compensation Act 1906, and so was not entitled to compensation under the Act. The case of *The Admiral Fishing Company* v. *Robinson*, [1910] 1 K.B. 549, was in point, for the remuneration in the present case, although different in form from was substantially the same as the remuneration in that case. It was there held that the claimant was remunerated by a share in the profits within the meaning of the sub-section. Section 7 (2) was intended to apply in all cases where the element of speculation was present in determining the remuneration due to members of the crews of fishing vessels. That element was present here.

Argued for the respondent—The purpose of section 7 (2) was to strike at partnership or joint-adventure. This was a case of neither. The respondent was under a contract of service. It was admitted that in addition to his wages the respondent received a commission ascertained in a certain way, but in no sense could it be said that he was remunerated by a share in profits or gross earnings. Remuneration in section 7 (2) meant sole remuneration. Reference was made to the following cases—*Gill* v. *Aberdeen Steam Trawling and Fishing Company, Limited*, 1908 S.C. 328, 45 S.L.R. 247; *Ellis* v. *Joseph Ellis & Company*, [1905] 1 K.B. 324; *Clark* v. *G. R. & W. Jamieson*, 1909 S.C. 132, 46 S.L.R. 73; *Whelan* v. *Great Northern Steam Fishing Company, Limited*, May 26, 1909, 78 L.J. (C.L.) 860, 25 L.T.R. 619; also to the opinion of Blackburn, J., in *ex parte Ferguson* v. *Hutchinson*, January 28, 1871, L.R., 6 Q.B. 280, at p. 291. The Act of 1906 was a remedial Act, and section 7 (2), being an excluding sub-section, must be strictly interpreted.

LORD KINNEAR—This is a stated case which is brought before us at a somewhat unusual stage in the proceedings, because there has been no inquiry. The Sheriff as arbitrator has allowed a proof, and the employer appeals against that decision. I should not wish it to be supposed that by entertaining an appeal at this stage we are giving any encouragement to appeals upon points of pleading before inquiry. The statute specially directs that the proceedings by way of arbitration are to be summary; and although the Sheriff's power to state a case for this Court is not restricted to any particular stage of the proceedings, it seems to me clear enough that the general intention of the statute is that the facts should first be ascertained, and that it is only when the determining facts have been fixed by the Sheriff that any question of law which he may have found it necessary to decide can be appealed to this Court. But I think that in the circumstances of this case the learned Sheriff has taken the most appropriate and convenient procedure, because the employer's objection to proof really goes to the foundation of the claim, and it is certainly for the advantage of both parties that the question should be determined before the expense of further procedure has been incurred.

The question is whether the workman applying for compensation is excluded from the benefit of the Act by the provisions of section 7, sub-section (2). The seventh section is that which applies the Act to seamen, and the second sub-section provides " . . . [*quotes, v. sup.*] . . ." That clause of exclusion applies to a kind of arrangement which, from cases which have come before the Court, we know to be common among fishermen, by which a fisherman agrees to work not for wages but for a share of the profits or gross earnings. That may occur, perhaps generally it does occur, when the arrangement between the members of the crew and the owner of the boat is not that of master and servant but of joint adventurers or partners in some form or another; but the case of *Clark* v. *Jamieson* (1909 S.C. 132, 46 S.L.R. 73) shows that it may also occur where the fisherman is employed upon a contract of service, and where there is no relation of copartnery between members of the crew *inter se* or between members of the crew and the owner of the boat if he himself is not one of the crew. But in either case the condition is that the fisherman is not paid by wages, but is paid by a share of the profits or gross earnings. Now the question is whether an arrangement of that kind was that adopted by the parties to this case. The facts are brought out quite clearly in the case stated by the Sheriff, and I understand that except in so far as the statement consists of mere citation of the pleadings, it is based upon the admissions of parties.

The Sheriff states that the appellant is a fish merchant, and that he is the owner of the steam trawler "Gloxinia," and that the respondent is a trawl fisherman who, while employed as a member of the crew of that steam trawler, on 15th January 1912 sustained injury by accident arising out of and in the course of his employment. The remaining statement of fact which is material is taken from the respondent's averments, but it is quite competent to take these averments as facts for the pur-

pose of deciding whether he has a good case. He avers that he is a workman in the sense of the Workmen's Compensation Act, and that the appellant is a fish merchant ant carrying on business in Glasgow. Then it is averred—"The pursuer had been for a week prior to 15th January 1912 in the employment of the defender on board the said steam trawler under a contract of service entered into between the master of the said trawler on behalf of the defender and the pursuer, under which contract the pursuer was engaged to act as second fisherman on board said trawler, and was to be remunerated for his services as follows, viz., by payment of the sum of thirty shillings a-week in cash, and by payment of a commission or percentage or poundage known as 'fish money' of twopence per pound sterling on the gross value of the fish landed each week by the said trawler, under deduction of the cost of the carriage of the fish." It is averred that during the week in which the pursuer was employed the gross value of the fish amounted to £42 and his poundage to at least 7s.

The case therefore is that this man was employed upon a contract of service, and was paid a fixed wage of 30s. a-week, and received in addition a payment, called fish money, of 2d. per pound on the value of the fish. We are not told, and it is not for the Court to conjecture, for what reason this additional sum was given. It is obvious enough, although I do not think it material to inquire whether the parties were in fact moved by any such consideration, that it might be an advantage to both to give the fisherman an interest in landing the fish in a saleable condition. The material point is that the fish money is, so far as it goes, a benefit to the fisherman over and above his wages, and the question is whether receiving this further payment excludes him from the benefit of the Act by force of subsection (2) of section 7. I think it does not. The provision is not that the Act shall not apply to persons who receive any benefit from profits or earnings, but that it shall not apply to members of a crew who are remunerated by shares in profits or gross earnings. I think that what was intended by these words is that the man shall be really and substantially remunerated by shares of profits or earnings as distinguished from fixed wages.

According to the ordinary use of language there is an implication of some degree of adequacy in the word "remunerate" and its cognates "remuneration" and "remunerative;" and if it were asked whether this man was remunerated by his commission on the gross earnings of the ship only, it would be a perfectly reasonable answer to say "No; if that were all he would have no remuneration at all; that would be altogether unremunerative." But his remuneration is by fixed wages, although in addition he gets 2d. per pound on the value of the fish.

The Act deals with two different classes of workmen—one class of workmen who are remunerated by wages and another who are remunerated by a share of profits. It was argued that we would not put that construction upon the statute without reading into sub-section (2) of section 7 some such word as "mainly" remunerated or "substantially" remunerated, and that is said to be an illegitimate process. I prefer to regard it as reading in nothing, but as construing words of ordinary language in a reasonable way in their application to the subject-matter; but if there is any foundation for the criticism I think it applies equally to the opposite construction which is maintained by the appellant. If the words are doubtful or obscure, it is not possible for either party to express what he considers the preferable reading without using some language that will make the true meaning a little more clear than the Act itself has made it. The respondent says it means, in a reasonable sense of the word, true or substantial remuneration for which the fisherman works. The appellant says it means any remuneration whatever, and if that is not so clear as to be put beyond dispute by the bare words of the clause, he is driven to the objectionable method of reading in some additional word to make it clearer, and after the word "remunerated" he reads in "to any extent whatever" or "in whole or in part." Of the two readings I prefer the respondent's, mainly or substantially; but the true answer is that the statute, reasonably construed with reference to the subject-matter, really contemplates two different classes of workmen—wage-earning workmen and profit-sharing workmen—and the sub-section before us excludes the latter only from the benefit of the Act.

The appellant's counsel cited the decision of the Court of Appeal in the case of the *Admiral Fishing Company* v. *Robinson*, [1910] 1 K.B. 540, as conclusive in his favour. I do not so read the case. The facts were different from those with which we are concerned. The workman was employed on a steam fishing boat, and was paid, not by a fixed wage, but by a share in the profits, with a guarantee from the owners that his share of the profits should not be less than 30s. a-week. It was held by the County Court Judge that he was not excluded from the benefit of the Act by force of the clause we have to consider, because he was not paid by profits only, but by profits with a guarantee. In the Court of Appeal this was held to be wrong, because the workman was paid by a share of profits none the less by reason of his obtaining from others interested in the adventure a guarantee that his share should not be less than a certain sum. But the point for which the case was cited was to show that we are not to read into the enactment any qualifying phrase which is not expressed in terms; and it is true that the fault which was found with the judgment of the County Court Judge was that he had read the word solely into the section so as to render it inapplicable to any member of the crew, who in a certain event might receive more than the amount of his share. This was said to be a decision to the effect that if a workman receives

any benefit from profits he is thereby brought within the scope of the excluding section, and he cannot be kept out of it except by the insertion of words which are not in the section. I find nothing in what was said by the learned Judges to support any such inference. On the contrary, the judgment of Lord-Justice Buckley, as I read it, brings out very clearly what I think is the true method of reasoning in the application of the section to a particular case. We must consider what is the true and substantial remuneration of the fisherman. Is it wages or a share of profits that he gets for his work? If it is a share of the profits, the learned Judge says that to read into the Act the word "solely" would render it impossible to work it, for a man is seldom if ever remunerated solely by a share. He gets his bunk on board ship. As a rule he gets his food and other incidentals. But if he is remunerated by a share he is a share-hand fisherman none the less because of those incidental advantages. But if, on the other hand, the man's true and substantial remuneration is not a share of profits but a fixed wage, the argument tells just as directly against the attempt to bring him into the class of share-hand fishermen. If a man is working for wages under a contract of service, he is a servant earning wages none the less because he is to get some incidental advantage out of the gross earnings of his employer. I concede that there might in certain circumstances be a question to which of the two classes a man belonged. But that would be a question of fact for the arbiter.

I come therefore to the conclusion that this respondent is beyond all question a "workman" within the meaning of the leading enactment entitling him to compensation. I think that was hardly questioned, although there is a point taken to the contrary in the stated case, but it is really beyond argument. A workman in the language of the statute "means any person who has entered into or works under a contract of service or apprenticeship with an employer." Now that this man did so is perfectly clear from the learned Sheriff's statement of facts. Being within the general enactment I do not think he is within the exclusion of section 7, sub-section (2), and I think the learned Sheriff took a perfectly proper course when he proposed to allow him to prove his case.

LORD DUNDAS—The question here raised is a very short one, but it is important, and, I think, difficult to decide. Section 7 of the Workmen's Compensation Act 1906, which for the first time included seamen within the class entitled to compensation, provides—"(2) . . . [*quotes, v. sup.*] . . ." We have to determine whether or not the respondent Woolfe is excluded by the terms of the sub-section just quoted from the benefits of the Act. The Sheriff-Substitute holds that he is not; I have come, somewhat reluctantly, to the opposite conclusion. Woolfe was engaged as second fisherman on board a steam trawler belonging to the appellant, and was to be remunerated for his services by payment of 30s. a-week in cash, and "by payment of a commission or percentage or poundage known as 'fish money' of twopence per pound sterling on the gross value of the fish landed each week from the said trawler, under deduction of the cost of carriage of the fish." I gather that he had been employed only for a week when he met with the accident in respect of which he now claims compensation. His "poundage" for that week amounted to about 7s.

It is clear that if Woolfe's sole money remuneration had been this weekly wage of 30s., his claim would have been within the Act; and on the other hand, that if his commission or share of the gross value of the fish had been his sole money remuneration, his claim would have been excluded by the terms of section 7 (2). But in fact he had both, and that raises sharply the question we have to determine. I do not know, and it is probably unnecessary to speculate, what may have been the policy or object of the Legislature in introducing the sub-section. It was suggested in the argument that the object was to exclude from the Act persons who were truly in the position of partners or co-adventurers. In that case the sub-section would seem to have been unnecessary, for it was expressly decided under the Act of 1897 that a partner who works for wages in the partnership undertaking is not a "workman" within the meaning of the Act, because he would *ex hypothesi* be one of his own employers, and the Act has regard to a relation between two opposite parties, employer and employed (*Ellis*, [1905] 1 K.B. 324). Whatever the object of the sub-section may have been, we must try to arrive at its proper construction and application with reference to the case before us. Now if one reads the language of the sub-section without addition or qualification, and asks whether or not the respondent was "remunerated by a share in the profits or the gross earnings of the working of the vessel," the only possible answer seems to me to be an affirmative one. If a different conclusion is to be reached, one must, I think, read into the sub-section some such word as either "solely," or "principally," "mainly," or the like. As against the first of these suggestions, we were referred to the case of *Admiral Fishing Company* ([1910] 1 K.B. 540). The man's remuneration there was undoubtedly a specified share of profits, but with an added guarantee that the share should not in any case be less than 30s. a-week. The Court of Appeal held that the claim was excluded. I think the judgment was right; and I further agree with the learned Judges who stated that in their opinion it was not legitimate to read into the sub-section the word "solely." As Buckley, L.J., observed—"To construe the Act in that way renders it impossible to work it, for a man is seldom, if ever, remunerated solely by a share. He gets his bunk on board ship; as a rule he gets

his food and other incidentals." Nor, in my judgment, is it any more legitimate to read into the Act such a word as "mainly" or "principally." If that were done the Court would have in each case to determine whether the certain value of the weekly wage or the uncertain value of the share was in fact the more valuable right. This does not commend itself to my mind as a sound rule or principle for dealing with the matter. I do not think the Act invites us to enter upon such considerations; their ascertainment might in some cases be difficult, and the result frequently unconvincing. The problem does not, in my judgment, lend itself to solution by simply determining in each case which of the two elements is the more valuable, and whether one can be regarded as the dominating, and the other as a merely subsidiary factor in the remuneration. Nothing that was said or decided in *Whelan* (1909 L.J. 78, Com. Law 860, 25 Times L.R. 619) seems to me to give any support or countenance to this method of dealing with the matter. If, then, one is to read the language of sub-section 2 without any addition or qualification, one must, in my opinion, hold that the Legislature has excluded from the Act any member of a fishing crew whose remuneration includes a share (however small) in the profits or gross earnings of the vessel. I can see that, if this conclusion is correct, there may be room for hardship, and even abuse of the Act, if a man is induced to take employment for what may be a fair money wage, with the additional attraction of some small share in the value of the fish, which (while in itself of perhaps trifling advantage at the best) would deprive him in case of accident of his claim for compensation. But if the law be what I am constrained to think it is, fishermen would doubtless very soon become alive to risks of the nature I have indicated.

For the reasons stated I should answer the questions put to us in the affirmative; but as your Lordships hold a different opinion the answer will, of course, be otherwise. I am (as already indicated) not sorry that the judgment of the Court is to be in favour of the respondent, although I do not see my way to concur in it.

LORD MACKENZIE—The question raised in this case is as to the proper construction to be put upon section 7 (2) of the Workmen's Compensation Act 1906.

The Sheriff-Substitute has held that the respondent is entitled to a proof of his averments. The appellant contends that the action should be dismissed, as the respondent's averments show that he falls within section 7 (2) of the Act, and is therefore not entitled to compensation. The important points in the respondent's averments are that for a week prior to the date of the accident he had been in the employment of the appellant under a contract of service to act as second fisherman on board the steam trawler "Gloxinia," of which the appellant is the registered owner; that he was to be remunerated for his services by payment of 30s. a-week in cash and by payment of a commission or percentage or poundage known as "fish money" of 2d. per £1 on the gross value of the fish landed each week from the trawler, under deduction of the cost of carriage of the fish; that during the week prior to the date of the accident the pursuer's poundage amounted to 7s. Upon these facts, which are not in dispute, it appears to me that the case does not fall within the exclusion of section 7 (2) of the Act. He cannot be regarded in a reasonable sense as remunerated by a share in the profits or gross earnings.

*Prima facie* section 7 (2) is intended to meet the case where the members of the crew are partners or joint-adventurers. If, however, its operation were limited to such cases only, the necessity for its insertion in the Act would be difficult to see. Once partnership or joint-adventure is established there is no room for the relation of employer and workman. This is brought out in the case of *Ellis* v. *Ellis & Company*, 1905, 1 K.B. 324. A partner or joint-adventurer would not be a workman, for section 13 enacts that to be a "workman" a person must have entered into or worked under a contract of service with an employer. The Act would not apply, and there would therefore be no necessity for a clause excluding from its provisions those who never were within them. There may, however, be cases in which, although working under a contract of service, the members of the crew of a fishing vessel agree to be remunerated by dividing the profits or gross earnings into shares, and yet the relationship is such that it cannot be said there is a partnership or joint-adventure. *Clark* v. *Jamieson*, 1909 S.C. 132, 46 S.L.R. 73, was a case which dealt not with a fishing but with a small cargo boat. It has, however, a bearing upon the present case, for it shows that a member of a crew who is remunerated by a share of the gross earnings of the vessel may be a workman within the meaning of the leading provisions of the Workmen's Compensation Act 1906, and not a partner in a joint-adventure. As Lord M'Laren pointed out there it would be difficult to hold there was joint-adventure where there was no contribution of capital and no liability for losses. In such a case, if the boat were a fishing vessel, the members of the crew, though they fell under the leading provisions of the Act, would be excluded from its operation by section 7 (2). An illustration of this is contained in the case of *The Admiral Fishing Company* v. *Robinson*, 1910, 1 K.B. 540. There all the crew were paid by shares in the adventure, and the claimant had a guarantee from the owners that his share should not be less than 30s. a-week. It was held notwithstanding the guarantee the claimant was remunerated by a share of the profits in the vessel, and therefore fell under the exclusion in section 7 (2).

In the present case the main provision of the contract of service is that the employer shall pay a fixed money wage of substantial

amount. The fact that a commission is to be paid over and above does not, in the circumstances of this case, make the subsection applicable. No doubt there might be a case in which there was a fixed allowance, *e.g.*, board and lodging, or a money payment of an equivalent amount, and a further provision of a share of profits, which latter was really the remuneration. In such a case the fixed allowance would not prevent the sub-section from applying. Remuneration is recompense or reward for services rendered, and the share of profits in such a case would rightly be regarded as the *quid pro quo*. The man's keep or allowance in lieu thereof could not be regarded in that case as his remuneration. Assistance may be got from the negative term "unremunerative." That does not mean that nothing is got, but that what is got is not an adequate return for what is done.

The question in each case is, in my opinion, one of fact for the arbiter. In the present case the claimant had been employed one week previous to the accident, and his poundage amounted to 7*s*. His wages were 30*s*. It cannot, in my opinion, fairly be said that the claimant was remunerated by a share of the profits. His remuneration was his wages, and the commission was of the nature of extra pay. We were referred to the case of *Whelan* v. *Great Northern Steam Fishing Company, Limited*, 1909, L.T.R. 913, where a man who was called a "share-hand" on board a steam trawler was held not entitled to compensation for an accident which happened to him while employed as a stower on board a cutter that took the boxes of fish to market. That case, however, does not assist in arriving at a conclusion here. In the present case I think the commission was an incident in the contract of service, the leading provision of which was the performance of work for a fixed money wage. I am therefore of opinion, on the facts of this case, that the Sheriff-Substitute was entitled to take the view he did, and that the question should be answered accordingly.

The LORD PRESIDENT and LORD JOHNSTON, who were present at the advising, gave no opinion, not having heard the case.

The Court answered the question of law in the case in the negative.

Counsel for Appellant—Murray, K.C.—Carmont. Agents—Beveridge, Sutherland, & Smith, W.S.

Counsel for Respondent—J. R. Christie—Mercer. Agent—T. M. Pole, Solicitor.

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*Friday, July 12.*

## FIRST DIVISION.

[Lord Dewar and a Jury.

## ROBERTSON *v.* WILSON.

*Reparation—Negligence—Road—Motor Car and Motor Cycle—Duties of Drivers on Main and Side Roads towards Each Other.*

While it is the duty of a person approaching a main road from a side road with the intention of crossing the main road to give way to traffic on the main road, there is also a duty on the part of those using the main road to approach a crossing with caution.

*Circumstances* in which the Court *refused* (1) to disturb a verdict of a jury finding that the driver of a motor car on the main road was responsible for a collision between the car and a motor cycle which had entered the main road from a side road, and (2) to *grant* a new trial on the ground of misdirection by the presiding Judge.

William Robertson, M.D., Ardmhor, Scone, *pursuer*, brought an action against J. W. Wilson, seed merchant, Perth, *defender*, for £500 damages in respect of injuries sustained by him through a collision between the defender's motor car and his (the pursuer's) motor cycle.

The *facts* as stated by the LORD PRESIDENT in his opinion (*infra*) were as follows—"A motor car was proceeding from Perth to Coupar-Angus along the main road. At a certain point on the road a side road, known as Crossford Road, enters the main road on the right-hand side at an angle of about 60 degrees. Consequently a person coming from Crossford Road and proceeding to Perth enters the main road at an acutely re-entrant angle. In front of the motor car was a cart which was going in the same direction as the car. At the time the accident happened the motor car had assumed such a position—I suppose with the intention of getting past the cart—as placed it, *i.e.*, the car, considerably to the right of the *medium filum* of the road, and in fact very near the verge. At that moment a motor cyclist emerged from the cross-road on his way to Perth, and a collision followed. In respect of the injury which he thereby sustained the motor cyclist has brought the present action against the owner of the car."

The case was tried before Lord Dewar and a jury on 19th January 1912 on the following issue—"Whether, on or about 18th July 1911, on the high road from Coupar-Angus to Perth, and at a point near the junction of said road and the road known as Crossford Road, the pursuer was injured in his person and in his property through the fault of the defender—to the loss, injury, and damage of the pursuer? Damages laid at £500."

The jury having awarded the pursuer £200 damages, the defender presented a bill of exceptions, and also moved for a