at the pithead), was expressly prohibited from doing; second, that the conduct of the respondent on the occasion in question was not authorised by the management of the pit, and his practice of doing similar work to that which he had been doing immediately before the accident was unknown to the management; and third, that no emergency had arisen in consequence of which the respondent's disobedience to the provisions of the Secretary of State's said Order might not have prejudiced his rights under the Workmen's Compensation Act.

In these circumstances, it seems to me clear that this is not a case of accident to a workman arising out of acts by him in the course of his duty. In such a case, on the authorities to which your Lordships have referred, the fact that such acts have been performed in disobedience to orders may not disentitle the workman to the benefits of the Act. Instead of such a case the accident here arose out of actings outside the sphere of the workman's employment. Under the cases quoted such actings prevent the workman from successfully maintaining that he has sustained an injury arising out of and in the course of his employment.

The Sheriff holds that while the respondent in connecting the cable with the detonator was not acting in the course of his employment in doing so, this was not the cause of the accident. Apparently he thinks that the respondent, having completed the operation which took him out of the course of his employment, had again resumed the course of his employment in the few seconds that elapsed before Howard turned the handle and the explosion occurred. It does not appear to me that this finding can be sustained on the facts as stated, whatever might have been the case had a considerable time elapsed between the respondent's act and the explosion.

But the respondent argued that if the Sheriff's ground of judgment was wrong, and if the respondent's act was the cause of the accident, the accident still arose out of and in the course of his employment, because he was entitled, as a condition of his employment, to assume that no explosive would be fired until he was out of the zone of danger. This contention seems to me inconsistent with the case of *Kerr* v. *Wm. Baird & Company, Limited* (1911 S.C. 701).

On the whole matter I think the question must be answered in the negative.

The LORD JUSTICE-CLERK was absent.

The Court answered the question of law in the negative, recalled the award of the arbitrator, and remitted to him to dismiss the claim.

Counsel for the Appellants—Horne, K.C. —Strain. Agents—Wallace & Begg, W.S.

Counsel for the Respondent—Moncrieff, K.C.—Wilton. Agent—D. R. Tullo, S.S.C.

Tuesday, February 25.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

MACKIE *v.* DAVIDSON.

Process—Sheriff—Remit for Jury Trial—Substantial Character of Cause—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 30.

In an action of damages at common law in the Sheriff Court for £300 for personal injury and injury to property the pursuer required the cause to be remitted to the Court of Session for jury trial. The Court *refused* a motion to remit the case back to the Sheriff, and ordered issues, on the ground that *ex facie* of the record the action was not unsuitable for jury trial in the Court of Session, the injuries averred being serious and the damages sought substantial.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sec. 30, enacts—"In cases originating in the Sheriff Court . . . where the claim is in amount or value above fifty pounds, and an order has been pronounced allowing proof . . ., it shall, within six days thereafter, be competent to either of the parties who may conceive that the cause ought to be tried by jury, to require the cause to be remitted to the Court of Session for that purpose, where it shall be so tried: Provided, however, that the Court of Session shall, if it thinks the case unsuitable for jury trial, have power to remit the case back to the Sheriff, or to remit it to a Lord Ordinary, or to send it for proof before a Judge of the Division before whom the cause depends."

William Thomas Mackie, commercial traveller, Aberdeen, *pursuer*, brought an action in the Sheriff Court at Aberdeen against Duncan Davidson, landed proprietor, Inchmarlo, Banchory, Kincardineshire, *defender*, for £300 damages in respect of injuries sustained by the pursuer to his person, motor cycle, and clothes, through the fault of a motor car driver, an employee of the defender, who on 5th October 1912, while driving a motor car belonging to the defender in Queen's Road, Aberdeen, ran down the pursuer, who was riding a motor cycle.

The pursuer averred, *inter alia*—"(Cond. 4) As the result of the pursuer being run down as aforesaid he sustained severe injury, and his motor cycle of the value of £40 was completely destroyed and his clothing ruined. He was knocked insensible, and did not recover consciousness until after he had been conveyed to the Aberdeen Royal Infirmary. The front of the motor car struck him a severe blow on the head, causing a wound of several inches in length. He was thrown to the ground with great violence and sustained numerous bruises on the arms, legs, and body. The wound on his forehead will leave a large permanent disfigurement. The result of the said accident will probably leave a

permanent defect upon his nervous system. He still suffers from violent nervous headaches due to the injury to his head as aforesaid. He has not yet recovered from the injuries he received. . . . (Cond. 6) Pursuer has suffered severe nervous shock. In the course of his work as a commercial traveller he has to be continually calling at farms scattered over a wide area, and also to make journeys through the crowded streets of towns. It is necessary to enable him to overtake his work to use a motor cycle and to be able to ride it through traffic. The result of the said accident and shock sustained by pursuer is that he will be unable for a long time to ride a motor cycle, and it is doubtful if he will ever be able to ride it where there is any traffic, and he will thus be seriously handicapped in carrying on his business."

On 4th February 1913 the Sheriff-Substitute (LOUTTIT LAING) allowed a proof, and on 10th February 1913 the pursuer required the cause to be remitted to the Second Division of the Court of Session for jury trial.

On 25th February 1913, on the case appearing in the Single Bills, counsel for the pursuer moved for an order for issues, and counsel for the defender moved that the case be remitted back to the Sheriff.

Argued for the defender—The case was of a trifling character and unsuitable for jury trial—*Barclay* v. *T. S. Smith & Company*, January 11, 1913, *supra* 308; *M'Nab* v. *Fyfe*, July 7, 1904, 6 F. 925, 41 S.L.R. 736.

Argued for the pursuer—The case was of a substantial character and suitable for jury trial, since the injuries sustained by the pursuer in his person and property were serious, and the damages which he sued for were substantial in amount.

LORD JUSTICE-CLERK—It is a question of circumstances in each case whether an action shall be sent back to the Sheriff Court for disposal or shall be continued in this Court, and it is impossible to draw any sharp line between those cases which should be sent back and those which should not. Among the cases in the reports there is none at all similar to the present. In *Macnab* v. *Fyfe* (6 F. 925), which was referred to, the averments were that the pursuer had "sustained severe and extensive bruising," and had been totally incapacitated for work. In *Barclay* v. *T. S. Smith & Company* (1913, 50 S.L.R. 308) it was averred that the "pursuer had received numerous and severe bruises on the body, arms, and legs," and that his bicycle and his clothing were destroyed. But these cases seem to me to be not on all fours with the present case. Here there was injury to the pursuer's head, and it was so severe an injury that he was taken in an unconscious state to the hospital and only recovered consciousness after a considerable interval. That was not surprising, for it is averred that the blow which he had received caused a very severe wound to his forehead—a wound which necessarily required careful surgical treatment. These averments would in my opinion be sufficient to make it very doubtful whether this was a case that should be sent back.

But there is also the averment that the wound will cause a "large permanent disfigurement." We must remember that the pursuer was not, as in the other cases I have referred to, a person in a position in which his external appearance was of no importance as affecting his occupation. He was a commercial traveller. Now it is common knowledge that anything that injures the appearance of a commercial traveller affects his position in two respects —first, it is not so likely that he will be employed as a traveller, for those who employ travellers select their men to some extent for their appearance; and secondly, and ancillary to that, he might not be so effective as a traveller when he presented himself to those with whom he wished to do business. We know quite well that very slight disfigurement may make a difference in such a case. It may be quite unreasonable, nevertheless it is the fact.

Again, it is averred that the pursuer suffered a nervous shock; and it is also averred that he in the course of his business has to use a motor cycle in order to accomplish his work as a commercial traveller. In former days such work was done without a motor cycle. Nowadays competition is so keen that it is necessary to accomplish as many visits as possible in a short time, and the question whether a man who has suffered from nervous shock and would take some time to recover can ride a motor cycle is one which might be taken into consideration by a jury. And then it is a further fact here that the pursuer's motor cycle has been destroyed and that the value of the cycle was £40.

On these grounds I have come to the conclusion that this is not one of the cases which we should refuse to send to a jury.

LORD SALVESEN—I am entirely of the same opinion. I think the power we have to send back to the Sheriff Court for proof a case which the pursuer has appealed for jury trial is a power which we should exercise with the greatest possible caution. It should be exercised only in cases where it appears upon the face of the record that the action is one of a trivial character, or for some other reason is not suited for determination by a jury in this Court.

Here I think the pursuer's claim is a substantial one. I can imagine that there may be serious injury resulting from a shock such as the pursuer received, rendering him unconscious at the time and disfiguring him, probably for life, and that altogether apart from the loss of property, which I think may fairly be assessed at something like £50, because he says his clothing was ruined as well as his motor cycle, and that he also incurred medical expenses.

I should like to repeat what I said to Mr Lippe during the course of the debate, viz., that I think it would be very unfortunate indeed for defenders in such actions if we were to exercise the power

we undoubtedly have in too generous a way. The result would be that a pursuer who desired to submit the assessment of his claim to a jury would simply proceed at once in the Supreme Court. If his claim were for more than £50 it would be a competent action in the Supreme Court, and if the action was one for personal injury the pursuer would be entitled to lay it before a jury. As matters stand, it is often very convenient that the early procedure should take place in the Sheriff Court, where it can be more cheaply carried through, and it is only when it has been ascertained that there is to be no settlement of the claim that there need be an appeal to this Court in order that a jury may be summoned to assess the damages or ascertain the liability. Accordingly I think it would be very unfortunate if we took the suggestion of Mr Lippe and remitted this case to the Sheriff Court. He says it would be as well tried by the Sheriff. I should be slow to differ from him, but the pursuer has a right to have his claim assessed by a jury. A jury may or may not be more generous than the Sheriff-Substitute would be, but the pursuer presumably thinks they would be, and accordingly he prefers that they should be his tribunal rather than the local judge. We are not entitled to deprive the pursuer of that opinion in this case, and I am very clearly of opinion that we should not accede to the motion for the defender.

LORD GUTHRIE — I am of the same opinion. I do not think the case is ruled either by the case of *Barclay* or by the case of *Macnab*. It seems to me that the particulars your Lordships have mentioned differentiate the case from these.

LORD DUNDAS was on circuit.

The Court ordered issues.

Counsel for the Pursuer—A. Mackenzie Stuart. Agents—Balfour & Manson, S.S.C.

Counsel for the Defender—Lippe. Agents—Macpherson & Mackay, S.S.C.

Friday, February 28.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

M'GEEHEN *v.* KNOX AND OTHERS.

Licensing Laws — Administration — Disqualification—Bias—Officials of Temperance Societies.

Certain members of the Licensing Court and of the Licensing Appeal Court were leading officials of Temperance Societies, the object of which was the total suppression of all licensed premises.

Held that the profession of these opinions did not disqualify these officials from sitting as members of the Licensing Courts.

On 9th August 1911 Robert M'Geehen, spirit merchant, Airdrie, *pursuer*, brought an action against James Knox, Provost of the burgh of Airdrie, and others, being the members of the Licensing Court and the Licensing Appeal Court of the burgh, and others, *defenders*, for reduction of the deliverances of these Courts refusing to renew the pursuer's licence.

The parties averred — "(Cond. 5) The said judgment [*i.e.*, the judgment of the Licensing Court], deliverance, or finding refusing the pursuer's application was null and void. It was incompetent and *ultra vires* of the Licensing Court to hear objections by the Procurator-Fiscal or Chief Constable on the ground that there were too many licences in the district. The only objections competent to these officials under the Licensing Act, and in particular sections 19, 20, and 21, are objections which apply to the particular licence under consideration. The question of the over-licensing of a district is one for the Court itself under section 11 of said Act. The members of the Licensing Court, and in particular the said James Knox, Matthew M'Laren Henderson, William Jack, and Thomas Armour, were disqualified from acting by reason of bias. In considering the said applications the said Licensing Court did not act judicially, but illegally and oppressively. The members of the Court particularly above mentioned belong to associations or lodges the object of which is the total suppression of all licensed premises. In taking part in the proceedings of said Court the said members did not intend to exercise, and did not in fact exercise, an honest judgment. The said James Knox, the chairman of the Court, is the Chief Templar of the 'Airdrie' Lodge of the Independent Order of Good Templars. The said Thomas Armour and William Jack are also leading and active officials of the said lodge. The said Matthew M'Laren Henderson is a member of said lodge, an official of a local 'Order of Rechabites,' and a member of a body called 'The Sons of Temperance.' The following are the 'principles' of the said Independent Order of Good Templars sworn to and to be rightly observed by all members of said Order, viz:—'Total abstinence enforced by a lifelong pledge and the absolute prohibition of the manufacture, importation, and sale of intoxicating drinks as beverages.' The following also are what is termed the Good Templars' Platform, viz:—'1. Total abstinence from all intoxicating liquors as a beverage. 2. No licence in any form under any circumstances for the sale of liquors to be used as a beverage. 3. The *absolute prohibition* (these two latter words are in italics) of the manufacture, importation, and sale of intoxicating liquors for such purposes; prohibition by the will of the people expressed in due form of law with the penalties derived for a crime of such enormity. 4. The creation of a healthy public opinion upon the subject by the active dissemination of truth in all modes known to enlightened philanthropy. 5.